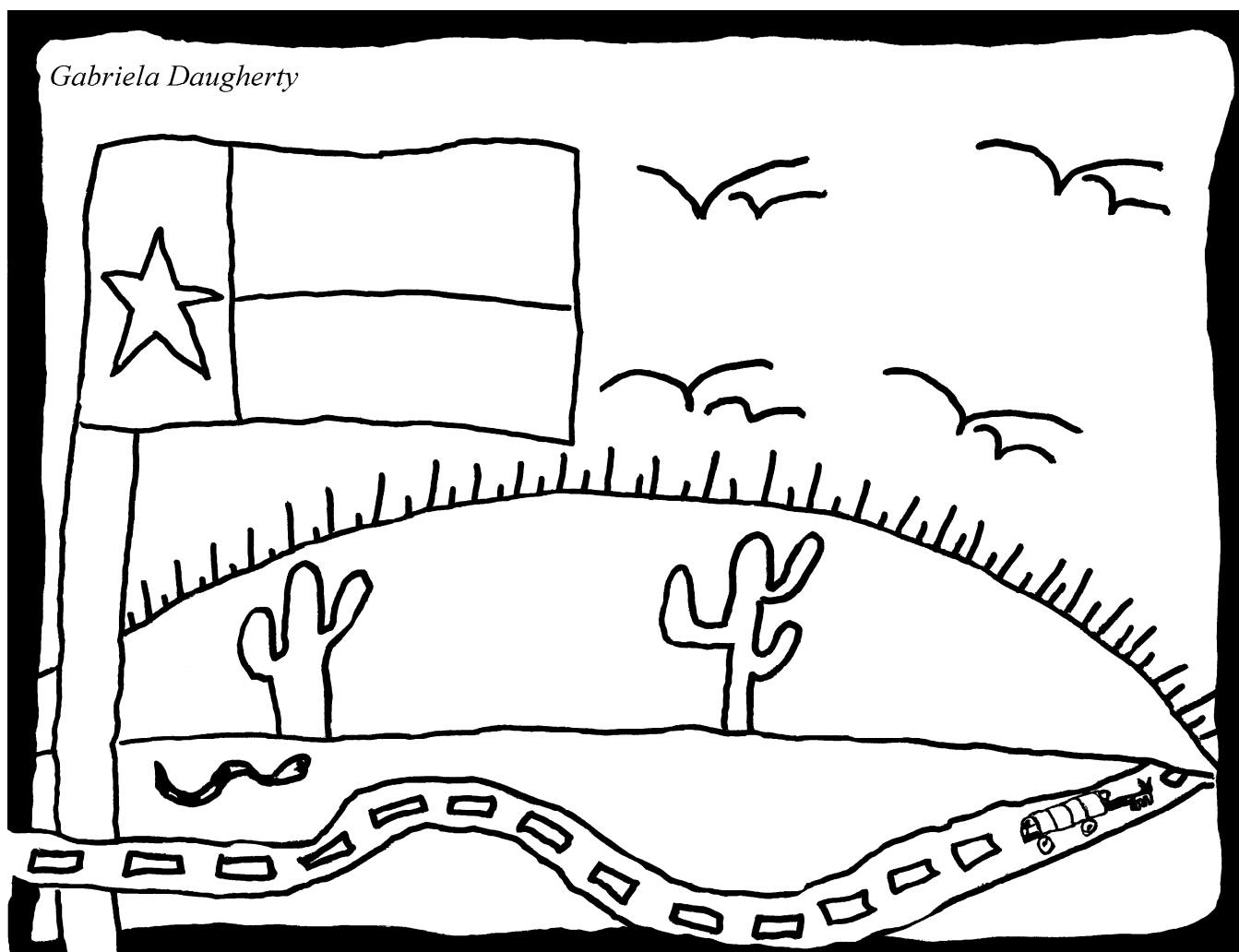

TEXAS REGISTER

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Gabriela Daugherty



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0810-GA

Requestor:

The Honorable Rodney Ellis
Chair, Committee on Government Organization
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Authority of the Governor to grant a posthumous pardon (RQ-0810-GA)

Briefs requested by August 17, 2009

RQ-0811-GA

Requestor:

Mr. Amadeo Saenz, Jr., PE, Executive Director
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701

Re: Authority of a magistrate to issue a certificate of title to a motor vehicle under article 47.02, Code of Criminal Procedure, or otherwise (RQ-0811-GA)

Briefs requested by August 20, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200903021
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 22, 2009

◆ ◆ ◆

Opinions

Opinion No. GA-0727

Mr. Duane Waddill

Executive Director

Texas Residential Construction Commission

Post Office Box 13509

Austin, Texas 78711-3509

Whether the Texas State Library and Archives Commission may require a state agency to create and maintain written minutes of the agency's public meetings (RQ-0781-GA)

S U M M A R Y

Because the Texas State Library and Archives Commission's rule requiring a state agency to create and maintain written minutes of the agency's open meetings is inconsistent with section 551.021 of the Open Meetings Act, we believe a court would likely find it invalid.

Opinion No. GA-0728

The Honorable Joe Black

Harrison County Criminal District Attorney

Post Office Box 776

Marshall, Texas 75671-0776

Re: Whether a judge of a statutory county court, the jurisdiction of which is limited to misdemeanor cases, is among the group of judges described in section 76.002 of the Government Code (RQ-0782-GA)

S U M M A R Y

The judge of a statutory county court who is trying criminal cases in the county or counties served by the judicial district and who has jurisdiction over only misdemeanor cases is likely among the group of judges described in Government Code section 76.002(a).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200903020
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 22, 2009

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1003

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1003, in Title 1, Part 15, Chapter 354, Subchapter A, Division 1, related to time limits for submitted claims for Medicaid school based services.

Background and Justification

The current cost reporting year for providing school based services, known in Texas as the School Health and Related Services Program (SHARS), is based on the Texas state fiscal year (September to August). The Centers for Medicare and Medicaid Services (CMS) approved Texas' request to base the cost reporting year on the federal fiscal year (October to September). HHSC requested this change in order to align SHARS cost reporting quarters with reporting for additional SHARS requirements and other Medicaid programs. As a result, HHSC proposes to base the claims filing deadline on the federal fiscal year.

The proposed amendment to the filing deadline will need to be in place by January 1, 2010, to enable school districts to complete their cost reports by March 1, 2010.

Section-by-Section Summary

Section 354.1003(a)(3) is modified to correct a TAC reference;

Section 354.1003(a)(5)(A) is modified to update an incorrect reference to the Health and Human Services Commission (HHSC);

Section 354.1003(a)(5)(J) changes the basis of the cost reporting year for SHARS claims from the state fiscal year to the federal fiscal year (FFY).

The rule was also modified to clarify certain provisions.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal im-

plications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will not be an effect on small businesses or micro businesses to comply with the proposed amendment, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Chris Taylor, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit, as a result of enforcing the proposed amendment, will be that the Medicaid reimbursement for SHARS providers will be in compliance with the new CMS requirements.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by the Government Code, §2001.0225. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under the Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Clarice Cefai, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200, Mail Code H-390 91X; by fax to (512) 249-3707; or by e-mail to Clarice.Cefai@hhsc.state.tx.us within 30 days of the publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for August 20, 2009, from 1:00 to 2:00 p.m. at the John H. Winters Building, Public Hearing Room, 125-E, located at 701 W. 51st Street, Austin, Texas. Persons re-

quiring further information, special assistance, or accommodations should contact Mary Haifley at (512) 491-5605.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§354.1003. Time Limits for Submitted Claims.

(a) Claims filing deadlines. Claims must be received by the Health and Human Services Commission (HHSC) or its designee in accordance with the following time limits to be considered for payment. Due to the volume of claims processed, claims that do not comply with the following deadlines will be denied payment.

(1) Inpatient hospital claims. Final inpatient hospital claims must be received by HHSC or its designee within 95 days from the date of discharge or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. In the following situations, hospitals may, and in one instance, must file interim claims:

(A) Hospitals reimbursed according to prospective payment may submit an interim claim after the patient has been in the facility 30 consecutive days or longer.

(B) Children's hospitals reimbursed according to Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) methodology may submit interim claims prior to discharge and must submit an interim claim if the patient remains in the hospital past the hospital's fiscal year end.

(2) Outpatient hospital claims must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later.

(3) Claims from all other providers delivering services reimbursed by the Texas Medicaid acute care program must be received by HHSC or its designee within 95 days from each date of service on the claim or 95 days from the date the Texas Provider Identifier (TPI) Number is issued, whichever occurs later. This requirement does not apply to providers who deliver long-term care services and are subject to the billing requirements under Title [of] 40 of the Texas Administrative Code [TAC §49.9].

(4) Providers [All claims] must adhere to claims [claim] filing and appeal deadlines and all claims must be finalized [paid] within 24 months of the date of service. Submitted claims that exceed this time frame and do not qualify for one of the exceptions listed in subsection (g) of this section will not be considered for payment by the Texas Medicaid program.

(5) The following exceptions to the claims-filing deadlines listed in this subsection [deadline] apply to all claims received by HHSC or its designee regardless of provider or service type.

(A) Claims on behalf of an individual who has applied for Medicaid coverage but has not been assigned a Medicaid recipient number on the date of service must be received by HHSC or its designee within 95 days from the date the Medicaid eligibility is added

to HHSC's [Husk's] eligibility file. This date is referred to as the "add date."

(B) If a client loses Medicaid eligibility and is later determined to be eligible, or if the Medicaid eligibility is established retroactively, the claim must be received by HHSC or its designee within 95 days from the "add date" and within 365 days from the date of service.

(C) When a service is a benefit of Medicare and Medicaid, and the client is covered by both programs (dually eligible), the claim must first be filed with Medicare. Claims processed by Medicare must be received by HHSC or its designee within 95 days from the date of Medicare disposition or final determination of any Medicare appeal decision.

(D) When a client is eligible for Medicare Part B only, the inpatient hospital claim for services covered as Medicaid only should be submitted directly to Medicaid. The time limits in paragraph (1) of this subsection apply.

(E) When a service is billed to another insurance resource, the claim must be received by HHSC or its designee within 95 days from the date of disposition by the other insurance resource.

(F) When a service is billed to a third party resource that has not responded, the claim must be received by HHSC or its designee within 365 days from the date of service. However, 110 days must elapse after the third party billing before submitting the claim to HHSC or its designee.

(G) When a Title XIX family planning service is denied by Title XX prior to being submitted to Medicaid, the claim must be received by HHSC or its designee within 95 days of the date on the Title XX Denial Remittance Advice.

(H) Claims for services rendered by out-of-state providers must be received by HHSC or its designee within 365 days from the date of service.

(I) Claims for services rendered by the County Indigent Health Care Program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline.

(J) Claims for services rendered by school districts under the School Health and Related Services (SHARS) program, for which certification of the expenditures of local or state funds is required, are due to HHSC or its designee within the 365-day federal filing deadline or 95 days after the last day of the Federal [State] Fiscal Year [FFY] [SFY], whichever comes first.

(b) Appeals. All appeals of claims and requests for adjustments must be received by HHSC or its designee within 120 days from the date of the last denial of and/or adjustment to the original claim. Appeals must comply with §354.2217 of this title.

(c) Incomplete Claims. Claims received by HHSC or its designee that [which] are lacking the information necessary for processing will be [are] denied as incomplete claims. The resubmission of the claim containing the necessary information must be received by HHSC or its designee within 120 days from the last denial date.

(d) Extension. If a filing deadline falls on a weekend or holiday, the filing deadline shall be extended to the next business day following the weekend or holiday.

(e) Additional Exceptions to the 95-day Claim Filing Deadline [claim filing deadline].

(1) HHSC shall consider the following additional exceptions ~~only~~ when at least one of the situations included in this subsection exists. The final decision of whether a claim falls within one of the exceptions will be made by HHSC.

~~[(1) Exceptions to the filing deadline are considered when one of the following situations exists:]~~

(A) Catastrophic event that substantially interferes with normal business operations of the provider, or damage or destruction of the provider's business office or records by a natural disaster, including but not limited to fire, flood, or earthquake; or damage or destruction of the provider's business office or records by circumstances that are clearly beyond the control of the provider, including but not limited to criminal activity. The damage or destruction of business records or criminal activity exception does not apply to any negligent or intentional act of an employee or agent of the provider because these persons are presumed to be within the control of the provider. The presumption can only be rebutted when the intentional acts of the employee or agent leads to termination of employment and filing of criminal charges against the employee or agent; or

(B) Delay or error in the eligibility determination of a recipient, or delay due to erroneous written information from HHSC or its designee, or another state agency; or

(C) Delay due to electronic claim or system implementation problems experienced by HHSC and its designee or providers; or

(D) Submission of claims occurred within the 365-day federal filing deadline, but the claim was not filed within 95-days from the date of service because the service was determined to be a benefit of the Medicaid program and an effective date for the new benefit was applied retroactively; or

(E) Recipient eligibility is determined retroactively and the provider is not notified of retroactive coverage.

(2) Under the conditions and circumstances included in paragraph (1) of this subsection, providers must submit the following documentation, if appropriate, and any additional requested information to substantiate approval of an exception. All claims that are to be considered for an exception must accompany the request. HHSC will consider only the claims that are attached to the request.

(A) All exception requests. The provider must submit an affidavit or statement from the provider stating the details of the cause for the delay, the exception being requested, and verification that the delay was not caused by neglect, indifference, or lack of diligence of the provider or the provider's employee or agent. This affidavit or statement must be made by the person with personal knowledge of the facts.

(B) Exception requests within paragraph (1)(A) of this subsection. The provider must submit independent evidence of insurable loss; medical, accident, or death records; or police or fire report substantiating the exception of damage, destruction, or criminal activity.

(C) Exception requests within paragraph (1)(B) of this subsection. The provider must submit the written document from HHSC₂ or its designee, that contains the erroneous information or explanation of the delayed information.

(D) Exception requests within paragraph (1)(C) of this subsection.

(i) The provider must submit the written repair statement, invoice, computer or modem generated error report (indicating

attempts to transmit the data failed for reasons outside the control of the provider), or the explanation for the system implementation problems. The documentation must include a detailed explanation made by the person making the repairs or installing the system, specifically indicating the relationship and impact of the computer problem or system implementation to claims submission, and a detailed statement explaining why alternative billing procedures were not initiated after the delay in repairs or system implementation was known.

(ii) If the provider is requesting an exception based upon an electronic claim or system implementation problem experienced by HHSC or its designee, the provider must submit a written statement outlining the details of the electronic claim or system implementation problems experienced by HHSC or its designee that caused the delay in the submission of claims by the provider, any steps taken to notify the state or its designee of the problem, and a verification that the delay was not caused by the neglect, indifference, or lack of diligence on the part of the provider or its employees or agents.

(E) Exception requests within paragraph (1)(D) of this subsection. The provider must submit a written, detailed explanation of the facts and documentation to demonstrate the 365-day federal filing deadline for the benefit was met.

(F) Exception requests within paragraph (1)(E) of this subsection. The provider must submit a written, detailed explanation of the facts and activities illustrating the provider's efforts in requesting eligibility information for the recipient. The explanation must contain dates, contact information, and any responses from the recipient.

(f) Exceptions to the 120-day appeal deadline. HHSC shall consider exceptions to the 120-day appeal deadline if the criteria listed in this subsection is met and there is evidence to support paragraphs (1) or (2) of this subsection ~~[for the situations listed below]~~. The final decision about whether a claim falls within one of the exceptions will be made by HHSC. This is a one-time exception request; therefore, all claims that are to be considered within the request for an exception must accompany the request. Claims submitted after HHSC's determination has been made for the exception will be denied consideration because they were not included in the original request.

~~[(4)]~~ An exception request must be received by HHSC within 18 months from the date of service in order to be considered. This requirement will be waived for the exceptions listed in paragraphs (2) and (3) ~~[paragraph (2)(B) and (3)(C)]~~ of this subsection and subsection (g) of this section.

~~[(2)]~~ The following exceptions to the 120-day appeal deadline will be considered if the criteria in paragraph (1) of this subsection is met and there is evidence to support subparagraph (A) or (B) of this paragraph:

(1) ~~[(A)]~~ Errors made by a third party payor that were outside the control of the provider. The provider must submit a statement outlining the details of the cause for the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part of the provider, the provider's employee, or agent. This affidavit or statement should be made by the person with personal knowledge of the facts. In lieu of the above affidavit or statement from the provider, the provider may obtain an affidavit or statement from the third party payor including the same information, and provide this to HHSC as part of the request for appeal.

(2) ~~[(B)]~~ Errors made by the reimbursement entity that were outside the control of the provider. The provider must submit a statement from the original payor outlining the details of the cause of the error, the exception being requested, and verification that the error was not caused by neglect, indifference, or lack of diligence on the part

of the provider, the provider's employee or agent. In lieu of the above reimbursement entity's statement, the provider may submit a statement including the same information, and provide this to HHSC as part of the request for appeal.

(3) [(C)] Claims were adjudicated, but an error in the claim's processing was identified after the 120-day appeal deadline. The error is not the fault of the provider but an error occurred in the claims processing system that is identified after the 120-day appeal deadline has passed.

(g) Exceptions to the 24-month claim payment deadline. HHSC shall consider exceptions to the 24-month claim payment deadline for the situations listed in paragraphs (1) - (3) of this subsection. The final decision about whether a claim falls within one of the exceptions will be made by HHSC.

(1) Refugee Eligible Status: The payable period for all Refugee Medicaid eligible recipient claims is the federal fiscal year in which each date of service occurs plus one additional Federal Fiscal year. The date of service for inpatient claims is the discharge date.

(2) Medicare/Medicaid Eligible Status: The payable period for Medicaid/Medicare eligible recipient claims filed electronically is 24 months from the date the file is received from Medicare by the claims administrator for Medicaid. The payable period for Medicaid/Medicare eligible recipient claims filed on paper is 24 months from the date listed on the Medicare Remittance Advice.

(3) Retroactive Supplemental Security Income Eligible: The payable period for Supplemental Security Income (SSI) Medicaid eligible recipients when the Medicaid eligibility is determined retroactively is 24 months from the date the Medicaid eligibility is added to the eligibility file. This date is referred to as the "add date."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

TRD-200902944

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 424-6576



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning Attendant Compensation Rate Enhancement, under Title 1, Part 15, Chapter 355, Subchapter A.

Background and Justification

This rule establishes the reimbursement methodology for the Attendant Compensation Rate Enhancement. Under this rule, providers in eligible programs may choose to maintain a certain attendant compensation level in return for increased attendant compensation rates. Participating providers failing to meet their spending requirements are subject to a recoupment of all atten-

dant compensation revenues associated with unmet spending goals. Recouped funds are reinvested (paid to) other providers within the same program that have spent more than they were paid for attendant compensation.

HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to these rules to:

modify Attendant Compensation Report submittal requirements to use cost reports in place of Attendant Compensation Reports in most situations;

eliminate reinvestment of recouped funds;

describe how spending requirements are determined when more than one enhancement level is in effect during a reporting period;

require that an authorized representative, as designated per the Department of Aging and Disability Services (DADS) Form 2031, sign any request to withdraw from participation in the enhancement program or to reduce a provider's enhancement payment to a lower participation level; and

Formalize procedures for allowing providers with control of multiple contracts to request to aggregate their reports for purposes of determining compliance with spending requirements.

The following is a discussion of the changes noted above.

Cost Reports. Currently the Attendant Compensation Rate Enhancement program mandates that each provider that receives enhanced funds submit an abbreviated enhancement cost report on the state fiscal year (the Attendant Compensation Report) in addition to the full cost report that is submitted on the provider's fiscal year for rate determination purposes. This stand alone Attendant Compensation Report is only necessary for reinvestment and will be eliminated if reinvestment is eliminated, as proposed. The cost report will be modified to add additional items to accommodate the information necessary to verify compliance with spending requirements. When reinvestment ends, HHSC will allow a transition period of one year in which Attendant Compensation Reports will still be required to be submitted.

Enrollment Levels for Different Reporting Periods. Currently, the required reporting period for Attendant Compensation Reports is the state fiscal year. This reporting period coincides with the effective period of the spending requirements and enrollment levels under the enhancement program. The required reporting period for cost reports is the provider's fiscal year, which is not necessarily the same as the state's fiscal year. As a result, a single cost report can be subject to multiple sets of enrollment levels. If full cost reports are to be used in place of enhancement reports for Attendant Compensation Report purposes, the rule must be amended to describe how enhancement requirements are determined when multiple sets of enrollment levels are in effect during a reporting period. The proposed amendment describes how enrollment levels are determined in such situations.

Elimination of Reinvestment Process. The amount of funds reinvested each year is dependent on the amount of funds recouped for that year and providers are not guaranteed that funds will be available for reinvestment in any given year. The amount of funds recouped and available for reinvestment has declined since the inception of the Attendant Compensation Rate Enhancement because of reforms that were made to the rules for this program that adjust downward the enhancement levels of providers that do not meet their spending requirements.

Over the past three reinvestment years, total attendant compensation reinvestments have ranged between \$500,000 and \$1.4

million per year. Because of the low levels of reinvested funds, the effort it takes providers to complete the Attendant Compensation Reports, and the effort it takes the state to process these reports and reinvestment payments, it is not cost effective to continue the requirements that providers submit an enhancement cost report in addition to their full cost report and that the state reinvest the recouped funds. Instead of reinvesting these recouped funds, the funds will be returned to the state and the federal Centers for Medicare and Medicaid Services as appropriate.

Provider Withdrawal. Providers participating in the enhancement are currently allowed to withdraw from the enhancement program or lower their enhancement level at any time upon submission of a letter requesting to withdraw. The proposed amendment will require that the letter requesting to withdraw or lower an enhancement level be signed by an authorized representative, as designated per the Department of Aging and Disability Services (DADS) Form 2031. This proposed change will ensure that the request for withdrawal or reduction of an enhancement level is made by an authorized individual.

Aggregation of Costs. Currently, controlling entities are permitted to request evaluation of spending requirements for all of their controlled entities within a program in the aggregate, but there are no rules defining an entity or control for this purpose. This lack of rules leads to difficulties and confusion in the administration of the aggregation process. The proposed amendment formalizes current administrative procedures, which should result in an increased understanding of the aggregation process and of provider requirements. The proposed amendment should also reduce areas of disagreement between providers and HHSC as to how the aggregation process is applied.

Section-by-Section Summary

The proposed amendments to §355.112 are as follows:

Revise subsection (f) to indicate that groups are defined in subsection (ee).

Revise subsections (f) and (g) to state that an acceptable enrollment contract amendment must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type.

Modify Attendant Compensation Report submittal requirements described in subsection (h) to use cost reports in place of Attendant Compensation Reports for services delivered after September 1, 2009, with certain exceptions.

Add a new subsection (h)(2) to explain that cost reports will replace Attendant Compensation Reports, with certain exceptions, for services delivered on September 1, 2009 and thereafter; and re-designate the subsequent paragraphs.

Add a new subsection (h)(2)(A) to state that Transition Attendant Compensation reports may be required in addition to required cost reports for services delivered from September 1, 2009 to August 31, 2010.

Add a new subsection (h)(2)(B) to state that when a participating provider changes ownership through a contract assignment, the prior owner will be required to submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC as the contract-assignment effective date and that this report will be used to determine any recoupment amounts for the indicated reporting period. In addition, this subparagraph will require the

new owner to submit a cost report covering the period from the day after the date recognized by HHSC as the contract-assignment date to the end of the provider's fiscal year.

Add a new subsection (h)(2)(C) to state that when a participating provider undergoes a contract termination, the provider will be required to submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the contract termination date and that this report will be used to determine any recoupment amounts.

Add a new subsection (h)(2)(D) to state that when a participating provider voluntarily withdraws from participation, the provider will be required to submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date of withdrawal and that this report will be used to determine any recoupment amounts. Additionally, this subparagraph will require these providers to submit a cost report covering the entire cost reporting period.

Add a new subsection (h)(2)(E) to state that for new providers participating in the enhancement, the cost reporting period will begin with the effective date of participation in the enhancement.

Add a new subsection (h)(2)(F) to state that when an existing provider becomes a participant as a result of the open enrollment process on any day other than the first day of their fiscal year, they will be required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation and ends on the last day of the provider's fiscal year and that this report will be used to determine any recoupment amounts. As well, this subparagraph will require these providers to submit a cost report covering the entire cost reporting period.

Renumber subsection (h)(3) as subsection (h)(4) and add new subsection (h)(4)(A) and (h)(4)(B). New subsection (h)(4) and (h)(4)(A) add cost reports functioning as Attendant Compensation Reports to the reports governed by the vendor hold and recoupment due to non-submittal of an acceptable report rules described in the paragraph.

Renumber former subsection (h)(4) as (h)(5) and revise it to include cost reports functioning as Attendant Compensation Reports as being governed by the provider-initiated amended accountability report rules described in the paragraph.

Revise subsection (i) to include cost reports functioning as Attendant Compensation Reports as being governed by the report content rules described in the subsection.

Revise subsection (j) to include cost reports functioning as Attendant Compensation Reports as being governed by the completion of reports rules described in the subsection and to indicate that, for services delivered on or after September 1, 2009, preparers must have attended cost report training as described in 1 TAC §355.102(d).

Revise subsection (s) to include cost reports functioning as Attendant Compensation Reports as being used to determine the amount of attendant compensation spending per unit of service delivered.

Add a new subsection (s)(4) to describe how the weighted average enhancement level in effect during the reporting period is calculated in cases where more than one enhancement level is in effect during the reporting period.

Revise subsection (t) to include cost reports functioning as Attendant Compensation Reports as being governed by the notification of recoupment rules described in the subsection.

Revise subsection (u) to include cost reports functioning as Attendant Compensation Reports as being governed by the enrollment limitation rules described in the subsection.

Revise subsection (u)(1) to include cost reports functioning as Attendant Compensation Reports as being governed by the enrollment limitation rules described in the paragraph.

Revise subsection (u)(1)(D) to include cost reports functioning as Attendant Compensation Reports as being governed by the enrollment limitation rules described in the subparagraph.

Revise subsection (u)(2) to include cost reports functioning as Attendant Compensation Reports as being governed by the informal review and formal appeal rules described in the paragraph.

Revise subsection (v) to remove references to subsection (h)(1)(B) and (h)(2)(A) and replace them with references to subsection (h).

Revise subsection (w)(4) to remove references to subsection (h)(1)(A) and (h)(2)(B) and replace them with references to subsection (h).

Revise subsection (x) to require that requests to withdraw from participation in the enhancement be signed by an authorized representative, as designated per the DADS Form 2031 applicable to the provider's contract or ownership type.

Revise subsection (y) to require that requests to adjust attendant compensation requirements be signed by an authorized representative, as designated per the DADS Form 2031 applicable to the provider's contract or ownership type.

Revise subsection (dd) to state that for services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped funds in the attendant compensation rate enhancement.

Add new subsection (ee) which formalizes requirements for compliance with spending requirements to be calculated in the aggregate for entities which control more than one contract within a program and re-designate the subsequent subsection.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of -\$211,339 for state fiscal year (SFY) 2010, -\$210,570 for SFY 2011, -\$210,467 for SFY 2012, -\$210,467 for SFY 2013, and -\$210,467 for SFY 2014. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider. There is no impact because current rules do not guarantee providers that funds will be available for reinvestment in any given year and do not guarantee that reinvestment funds will be paid to any particular provider for any particular time period.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that community care providers will no longer have to complete, and HHSC will no longer have to process, Attendant Compensation Rate Enhancement cost reports in addition to full cost reports. Additionally, HHSC and providers will have clear guidance on how to calculate spending requirements when more than one set of enrollment levels is in effect during a cost reporting period and authorized representatives of the providers will be responsible for requesting the withdrawal from the enhancement program, making the providers aware that they will no longer receive enhancement payments. Finally, agency staff and providers will have clear guidance on requirements for compliance with spending requirements to be calculated in the aggregate for entities which control more than one contract in a program.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.112. Attendant Compensation Rate Enhancement.

(a) (No change.)

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of DAHS, RC, and CBA AL/RC programs, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the DAHS, RC, and CBA AL/RC programs that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants.

(2) - (4) (No change.)

(c) - (e) (No change.)

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group as defined in subsection (ee) of this section or as individuals for purposes related to the attendant compensation rate enhancement. For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participating in the attendant compensation rate enhancement. If the PHC provider selects to have their contracts participating as a group as defined in subsection (ee) of this section, then the provider must select to have priority, nonpriority, or both priority and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during any single open enrollment period. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to

modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative [signatory] as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DADS client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative [signatory] as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contractors specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements. [Attendant Compensation Reports must be submitted as follows:]

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time

as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) - (D) (No change.)

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment effective date to the end of the provider's fiscal year.

(C) Participating providers whose contracts are terminated either voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers who voluntarily withdraw from participation as per subsection (x) of this section must submit

an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(3) [(2)] Other reports. HHSC may require other reports from all contracts as needed.

(4) [(3)] Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating contractor who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection [an Attendant Compensation Report] completed in accordance with all applicable rules and instructions [by the due dates described in this subsection]. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report [Attendant Compensation Report].

(A) Participating contracts that do not submit an acceptable report [Attendant Compensation Report] completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor [facility] for services provided during the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released. [In addition, participating]

(B) Participating contracts that have terminated or undergone a contract assignment from one legal entity to a different legal entity that do not submit an acceptable report completed in accordance with all applicable rules and instructions [Attendant Compensation Report] within 60 days of the contract assignment or contract termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable

report is not received within 365 days of the contract assignment or contract termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC₂ or its designee, the vendor hold associated with the report will be released.

(5) ~~[(4)]~~ Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. ~~[Provider-initiated amended Attendant Compensation]~~ Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) ~~[Attendant Compensation]~~ Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). For services delivered on or before August 31, 2009, for Attendant Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Attendant Compensation Reports for odd numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Attendant Compensation Report. For services delivered on or after September 1, 2009, preparers must have attended cost report training as described in §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs).

(k) - (r) (No change.)

(s) Spending requirements for participating contracts. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. In all other cases, if the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement (as specified in subsection (f) of this section) compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report described in subsection (h) of this section or, for cost reports functioning as Attendant

Compensation Reports, the total attendant compensation as reported on the aggregated cost reports for the group. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) - (3) (No change.)

(4) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC₂ or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h)[(4)] of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC₂ or its designee₂ will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) - (C) (No change.)

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's

most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) - (4) (No change.)

(v) Contract terminations. For contracted providers required to submit an Attendant Compensation Report due to a contract termination as described in subsection (h)[~~(1)(B)~~] of this section, HHSC₂ or its designee₂ will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)[~~(2)(A)~~] of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC₂ or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC₂ or its designee₂ will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC₂ or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) - (2) (No change.)

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC₂ or its designee₂ on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h)[~~(1)(A)~~] of this section, HHSC₂ or its designee₂ will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)[~~(2)(B)~~] of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC₂ or its designee. HHSC₂ or its designee₂ will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment

due to HHSC₂ or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z) - (cc) (No change.)

(dd) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced attendant compensation rate funds.

(1) - (4) (No change.)

(ee) Determination of compliance with spending requirements in the aggregate for a group.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(E) Group--an entity, commonly owned corporation, or combined entity that controls more than one participating contract within a single program.

(2) Aggregation. For a group, compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts controlled by the group at the end of the rate year, the effective date of the change of ownership of the group's last participating contract, or the effective date of the termination of the group's last participating contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must request to participate as a group, in a manner prescribed by HHSC, upon submission of each Enrollment Contract Amendment. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Ownership changes or terminations. Contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) ~~[(ee)]~~ Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

TRD-200902961

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 424-6576



SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.308, concerning Direct Care Staff Rate Component, under Title 1, Part 15, Chapter 355, Subchapter C.

Background and Justification

This rule establishes the reimbursement methodology for the Nursing Facility Direct Care Staff Rate Component rate enhancement. Under this rule, nursing facilities may choose to maintain a certain staffing level in return for increased direct care staff reimbursement rates. Participating facilities failing to meet their staffing and/or spending requirements are subject to a recoupment of all direct care staff revenues associated with unmet staffing and/or spending goals. Currently, recouped funds are reinvested (paid to) other nursing facilities that have exceeded their staffing requirements.

HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to this rule to:

modify Staffing and Compensation Report submittal requirements to use cost reports in place of Staffing and Compensation Reports in most situations;

eliminate reinvestment of recouped funds;

allow for release of vendor hold if an acceptable report is not received within 365 days of the due date and all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee;

describe how staffing requirements are determined when minimum required Licensed Vocational Nurse (LVN)-equivalent minutes per resident day of service associated with a Resource Utilization Group III (RUG-III) case mix group or supplemental reimbursement group (e.g., the continuous ventilation add-on group, the less-than-continuous ventilation add-on group and the pediatric tracheotomy add-on group) changes during a reporting period;

describe how enhanced staffing levels are determined in cases where more than one enhanced staffing level is in effect during a reporting period;

require that an authorized representative, as designated per the Department of Aging and Disability Services (DADS) Form 2031, sign any request to withdraw from participation in the enhancement program; and

add commonly owned corporations to the types of controlled entities permitted to aggregate their costs for determination of compliance with spending requirements.

The following is a discussion of the changes noted above.

Cost Reports. Currently, the Nursing Facility Direct Care Staff Rate Component enhancement program (enhancement program) mandates that each provider that receives enhanced funds submit an abbreviated enhancement cost report for the state fiscal year (the Staffing and Compensation Report) in addition to the full cost report that is submitted for the provider's fiscal year for rate determination purposes. This stand-alone Staffing and Compensation Report is only necessary for reinvestment purposes and will be eliminated if the process of reinvestment is eliminated, as proposed. The cost report will be modified to add additional items to accommodate the information necessary to verify compliance with staffing and spending requirements. After the process of reinvestment ends, HHSC will allow a transition period of one year in which the Staffing and Compensation Reports will still be required to be submitted.

Staffing Requirements for Different Reporting Periods. Currently, the required reporting period for Staffing and Compensation Reports is the state fiscal year. This reporting period coincides with the effective period of the staffing requirements and enrollment levels under the enhancement program. The required reporting period for cost reports is the provider's fiscal year, which is not necessarily the same as the state's fiscal year. As a result, a single cost report can be subject to multiple sets of staffing requirements and enrollment levels. If full cost reports are to be used in place of enhancement reports for Direct Care Staff Rate purposes, the rule must be amended to describe how enhancement requirements are determined when multiple sets of staffing requirements and enrollment levels are in effect during a reporting period. The proposed amendment describes

how staffing requirements and enrollment levels are determined in such situations.

Elimination of Reinvestment Process. The amount of funds reinvested each year is dependent on the amount of funds recouped for that year and providers are not guaranteed that funds will be available for reinvestment in any given year. The amount of funds recouped and available for reinvestment has declined since the inception of the enhancement program because of reforms that were made to the rules for this program that adjust downward the enhancement levels of providers that do not meet their staffing requirements.

Over the past three reinvestment years, total nursing facility reinvestments have ranged between \$1 million and \$3.2 million per year. Because of the low levels of reinvested funds, the effort it takes providers to complete the Staffing and Compensation Reports, and the effort it takes the state to process these reports and reinvestment payments, HHSC has determined it is not cost effective to continue to require that providers submit an enhancement cost report in addition to their full cost report and that the state reinvest the recouped funds. Instead of reinvesting these recouped funds, the funds will be returned to the state and the federal Centers for Medicare and Medicaid Services, as appropriate.

Vendor Hold. Providers who fail to submit an acceptable Staffing and Compensation Report within stated timeframes have their vendor payments held by the state until an acceptable report is submitted. If an acceptable report is not submitted within 60 days of the stated due date, all enhanced funds associated with the report are recouped by the state and if an acceptable report is not submitted within 365 days of the stated due date, the recoupment becomes permanent and the vendor remains on vendor hold. The proposed amendment will allow for the release of the vendor hold after the recoupment becomes permanent.

Provider Withdrawal. Providers participating in the enhancement program are currently allowed to withdraw from the enhancement program at any time upon submission of a letter requesting to withdraw. The proposed amendment will require that the letter requesting to withdraw be signed by an authorized representative, as designated per the Department of Aging and Disability Services (DADS) Form 2031. This proposed change will ensure that the request for withdrawal is made by an authorized individual.

Aggregation of Costs. Currently, providers participating in the enhancement program are allowed to request that all participating nursing facilities controlled by their controlling entity be permitted to aggregate their costs for determination of compliance with spending requirements. The proposed amendment adds commonly owned corporations to the types of controlled entities permitted to aggregate their costs for this purpose. The proposal also makes non-substantive changes to rule language governing aggregation for nursing facilities to make the language consistent with rule language governing aggregation in other programs.

Section-by-Section Summary

The proposed amendments to §355.308 are as follows:

Revise subsections (d) and (e) to state that an acceptable enrollment contract amendment must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type;

Modify Staffing and Compensation Report submittal requirements described in subsection (f) to use cost reports in place of Staffing and Compensation Reports for services delivered after September 1, 2009, with certain exceptions;

Add a new subsection (f)(2) to explain that cost reports will replace the Staffing and Compensation Reports, with certain exceptions, for services delivered on September 1, 2009, and thereafter; and re-designate the subsequent paragraphs.

Add a new subsection (f)(2)(A) to state that Transition Staffing and Compensation reports may be required in addition to required cost reports for services delivered from September 1, 2009, to August 31, 2010.

Add a new subsection (f)(2)(B) to state that when a participating facility changes ownership, the prior owner will be required to submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC as the ownership-change effective date and that this report will be used to determine any recoupment amounts for the indicated reporting period. In addition, this subparagraph will require the new owner to submit a cost report covering the period from the day after the date recognized by HHSC as the ownership-effective date to the end of the facility's fiscal year.

Add a new subsection (f)(2)(C) to state that when a participating facility undergoes a contract termination, the facility will be required to submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the contract termination date and that this report will be used to determine any recoupment amounts.

Add a new subsection (f)(2)(D) to state that when a participating facility voluntarily withdraws from participation, the facility will be required to submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date of withdrawal and that this report will be used to determine any recoupment amounts. Additionally, this subparagraph will require these facilities to submit a cost report covering the entire cost reporting period.

Add a new subsection (f)(2)(E) to state that for new facilities participating in the enhancement, the cost reporting period will begin with the effective date of participation in the enhancement.

Add a new subsection (f)(2)(F) to state that when an existing facility becomes a participant as a result of the open enrollment process on any day other than the first day of its fiscal year, the facility will be required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation and ends on the last day of the facility's fiscal year and that this report will be used to determine any recoupment amounts. In addition, this subparagraph will require these facilities to submit a cost report covering the entire cost reporting period.

Renumber subsection (f)(3) as subsection (f)(4) and add new subsection (f)(4)(A) and (f)(4)(B). New subsection (f)(4) and (f)(4)(A) add cost reports functioning as Staffing and Compensation Reports to the reports governed by the vendor hold and recoupment due to non-submittal of an acceptable report rules described in the paragraph and to allow for the release of vendor holds placed due to non-submittal of an acceptable report if an acceptable report is not received within 365 days of the due date and all funds associated with participation in the enhancement during the reporting period in question have been recouped.

Renumber former subsection (f)(4) as (f)(5) and revise it to include cost reports functioning as Staffing and Compensation Reports as being governed by the provider-initiated amended accountability report rules described in the paragraph.

Revise subsection (g) to include cost reports functioning as Staffing and Compensation Reports as being governed by the report content rules described in the subsection.

Revise subsection (h) to include cost reports functioning as Staffing and Compensation Reports as being governed by the completion of reports rules described in the subsection.

Revise subsection (i) to include cost reports functioning as Staffing and Compensation Reports as being governed by the enrollment limitation rules described in the subsection.

Revise subsection (i)(1) to include cost reports functioning as Staffing and Compensation Reports as being governed by the enrollment limitation rules described in the paragraph.

Revise subsection (i)(1)(D) to include cost reports functioning as Staffing and Compensation Reports as being governed by the enrollment limitation rules described in the subparagraph.

Add a new subsection (j)(1)(G) to describe how the weighted average LVN equivalent minutes in effect during the reporting period are determined in cases where the minimum required LVN equivalent minutes per resident day of service change during the reporting period.

Add a new subsection (j)(5) to describe how the weighted average level in effect during the reporting period is calculated in cases where more than one enhanced staffing level is in effect during the reporting period.

Revise subsection (r) to require that requests to withdraw from participation in the enhancement must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type.

Revise subsection (s) to include cost reports functioning as Staffing and Compensation Reports as being governed by the notification of recoupment rules described in the subsection and to change a reference to subsection (f)(1) to a reference to subsection (f).

Revise subsection (t) to change a reference to subsection (f)(1)(A) - (B) to a reference to subsection (f).

Revise subsection (aa) to add new subsection (aa)(1) to add definitions relating to aggregation and to define commonly owned corporations.

Revise subsection (aa) to add new subsection (aa)(2) to add commonly owned corporations to the types of entities allowed to aggregate their costs for determination of compliance with spending requirements and to make changes to the rule language to clarify the intent of aggregation and to make the language consistent with rule language governing aggregation in other programs.

Revise subsection (cc) to state that for services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped funds in the enhanced direct care staff rate program.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of -\$1,309,911 for state fis-

cal year (SFY) 2010, -\$1,305,143 for SFY 2011, -\$1,304,507 for SFY 2012, -\$1,304,507 for SFY 2013, and -\$1,304,507 for SFY 2014. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider. There is no impact because current rules do not guarantee providers that funds will be available for reinvestment in any given year and do not guarantee that reinvestment funds will be paid to any particular provider for any particular time period.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that nursing facility providers will no longer have to complete, and HHSC will no longer have to process enhancement cost reports in addition to full cost reports. Additionally, vendor holds will no longer be required to be maintained after enhancement-related recoupments are received and HHSC and providers will have clear guidance on how to calculate weighted average minimum staffing requirements and enrollment levels when more than one set of minimum staffing requirements or enrollment levels are in effect during a cost reporting period. Also, authorized representatives of the nursing facilities will be responsible for requesting the withdrawal from the enhancement program, ensuring that nursing facilities will be aware that they will no longer receive enhancement payments. Finally, commonly owned corporations will be permitted to aggregate their costs for determination of compliance with spending requirements.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512)

491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commissioner's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.308. *Direct Care Staff Rate Component.*

(a) - (c) (No change.)

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (ee) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative [signator] as per the Texas Department of Aging and Disabilities Services (DADS) Form 2031 applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment

contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative [signator] as per the DADS Form 2031 applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the mailing of notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements. [Staffing and Compensation Reports must be submitted as follows:]

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) - (D) (No change.)

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will replace the Staffing and Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating facilities may be required to submit Transition Staffing and Compensation Reports in addition to required cost reports. The Transition Staffing and Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Staffing and Compensation report or the facility's 2010 cost report.

(B) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the facility's fiscal year.

(C) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the contract termination date. This report will be used as

the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new facilities as defined in subsection (e) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing facilities which become participants in the enhancement as a result of the open enrollment process described in subsection (c) of this section on any day other than the first day of their fiscal year are required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(3) [(2)] Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) [(3)] Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection [Staffing and Compensation Report] completed in accordance with all applicable rules and instructions [by the due dates described in this subsection]. This vendor hold will remain in effect until HHSC receives an acceptable report [Staffing and Compensation Report is received by HHSC].

(A) Participating facilities that do not submit an acceptable report [a Staffing and Compensation Report] completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released. [In addition, participating]

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable [a Staffing and Compensation] report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an im-

mediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent and if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) [(4)] Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). For services delivered on or before August 31, 2009, for Staffing and Compensation Reports for even-numbered state fiscal years, preparers must have attended the cost report training for that same even-numbered year. For Staffing and Compensation Reports for odd-numbered state fiscal years, preparers must have attended the most recent cost report training sessions provided prior to the due date of the Staffing and Compensation Report. For services delivered on or after September 1, 2009, preparers must have attended cost report training as described in §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs).

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will issue a notification letter that informs a facility in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report does not represent its current staffing levels.

(A) - (C) (No change.)

(D) If the facility's Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report for the rate year that included the open enrollment period described in subsection (d) of this section shows the facility staffed below the level it

presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents and the facility will be limited to the level supported by the report for the remainder of the rate year.

(E) (No change.)

(2) - (3) (No change.)

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) - (F) (No change.)

(G) In cases where the minimum required LVN-equivalent minutes per resident day of service associated with a RUG-III case mix group or supplemental reimbursement group change during the reporting period, the minimum required LVN-equivalent minutes for the RUG-III case mix group or supplemental reimbursement group for the reporting period will be equal to the weighted average LVN-equivalent minutes in effect during the reporting period for that group calculated as follows:

(i) Multiply the first minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first minimum required LVN equivalent minutes were in effect.

(ii) Multiply the second minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second minimum required LVN equivalent minutes were in effect.

(iii) Sum the products from clauses (i) and (ii) of this subparagraph.

(iv) Divide the sum from clause (iii) of this subparagraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in clauses (i) and (ii) of this subparagraph.

(2) - (4) (No change.)

(5) In cases where more than one enhanced staffing level is in effect during the reporting period, the staffing requirement will be based on the weighted average enhanced staffing level in effect during the reporting period calculated as follows:

(A) Multiply the first enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first enhanced staffing level was in effect.

(B) Multiply the second enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second enhanced staffing level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(k) - (l) (No change.)

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility's adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) (No change.)

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) (No change.)

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) - (v) (No change.)

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (l) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection[-] according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) (No change.)

(n) - (q) (No change.)

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS Form 2031 applicable to the provider's contract or ownership type. Facilities voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in

adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f)(4) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter.

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f)(4)(A) - (B) of this section will have funds held as per 40 TAC §19.2308(2) (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) - (z) (No change.)

(aa) Determination of compliance with spending requirements in the aggregate. [In cases where a parent company, sole member, or governmental body controls more than one nursing facility (NF) contract participating in the enhanced direct care staff rate, the parent company, sole member, or governmental body has the option to have its participating contracts' compliance with the spending requirements detailed in subsection (o) of this section for the applicable reporting period evaluated in the aggregate. In such cases, compliance with the spending requirements will be evaluated in the aggregate for all participating NF contracts that the parent company, sole member or governmental body controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last participating NF contract. This option is called grouping. To exercise the grouping option, the parent company, sole member, or governmental body must submit a grouping request, in a manner prescribed by HHSC, at the time each Annual Staffing and Compensation Report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such requests will be reviewed on a case-by-case basis. A new request to have compliance with spending requirements evaluated in the aggregate must be submitted for each reporting period. NF contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation. A facility that does not participate in the enhanced direct care staff rate is excluded from all aggregate spending calculations because it is not subject to the spending requirements detailed in subsection (o) of this section.]

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same person(s) as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (o) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating NF contract, or the effective date of the termination of its last participating NF contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Staffing and Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) (No change.)

(cc) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced direct care staff rate funds.

(1) - (5) (No change.)

(dd) - (ee) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

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Steve Aragón

General Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6576

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §19.181

The Texas Department of Agriculture (the department) proposes an amendment to §19.181 concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The amendment is made to add Brazos, Chambers, Comal, Fort Bend, and Nacogdoches counties to the list of subterranean termite-infested counties in Texas. The Texas A&M University recently informed the department that the subterranean termite infestations were detected in these five counties since publication of the list of the 25 termite-infested counties in the August 11, 2006, issue of the *Texas Register*. The amended section was adopted on an emergency basis on June 16, 2009, as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4389). The department believes that restriction on the movement of quarantined articles from these five counties would delay the spread of this termite into free areas of Texas. The department further believes that it is necessary to take this action to reduce spread of the Formosan subterranean termite into free areas of Texas.

The amendment to §19.181 adds Brazos, Chambers, Comal, Fort Bend, and Nacogdoches counties to the list of the Formosan subterranean termite-infested counties in Texas.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the amended section, as proposed.

Dr. Nilakhe has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be reduction in the spread of this termite due to manmade activities. There will be a treatment cost to small and/or micro-businesses that move quarantined articles from the amended quarantined counties to free areas. The quarantined articles are primarily railroad cross ties sold by some nurseries. In order to comply with the amended section, businesses located in the amended counties may be required to treat quarantined articles by fumigation. The primary pesticide available for use in treatment for this pest is methyl bromide. The average cost of fumigation, the only method of treatment currently approved by the department, using methyl bromide is \$1,000 per 178 cubic yard, which would

cover about 1,333 railroad cross ties, assuming a standard cross tie of 6 inches by 8 inches, by 8 feet. Other than treatment by fumigation, there are no other effective methods available for treatment for this pest. The actual cost of treatment will depend on the volume of quarantined articles moved from infested counties to non-infested counties. Consequently, the specific cost to the impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §19.181 is proposed under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.181. *Quarantined Areas.*

The quarantined areas are:

(1) - (9) (No change.)

(10) Texas counties: Anderson, Angelina, Aransas, Bexar, Brazoria, Brazos, Cameron, Chambers, Collin, Comal, Colorado, Dallas, Denton, Fort Bend, Galveston, Gregg, Harris, Henderson, Hidalgo, [Harris,] Jefferson, Johnson, Liberty, Nacogdoches, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

TRD-200902956

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 463-4075

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 54. DISASTER RECOVERY

10 TAC §54.1, §54.2

The Texas Department of Housing and Community Affairs proposes new 10 TAC Chapter 54, Disaster Recovery, §54.1, concerning Definitions, and §54.2, concerning General Provisions. The proposed new sections will establish rules to ensure com-

pliance with statutory funding requirements, formalize existing policy, to effectively monitor the activities under disaster assistance, to ensure benchmarks are achieved and disaster funds are spent timely.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the rules will be enhanced compliance with formalized policy, all contractual and statutory requirements. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new sections affect no other code, article or statute.

§54.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) CDBG--Community Development Block Grant.
- (2) Good cause--Verifiable events beyond the control of the TDHCA and the Subrecipient such as unavailability of records from third parties, impediments due to coordination with other governmental entities, delays due to inclement weather or other acts of God, funding delays, wide-spread shortage of labor or other significant resources.
- (3) NOFA--Notice of Funding Availability.
- (4) RFP--Request for Proposal.
- (5) TDHCA--Texas Department of Housing and Community Affairs.

§54.2. General Provisions.

(a) The Contract term will not exceed twenty-four (24) months, and performance under the Contract will be evaluated with the following benchmarks:

(1) Community Development Block Grant (CDBG) Disaster Homeowner Assistance Activities. The Contract term will not exceed twenty-four (24) months. Performance under the Contract will be based on the following benchmarks from the Contract begin date:

(A) Six (6) months--Pool of applicants identified, eligibility assessment begun including site specific environmental on a minimum of 10% of applicants;

(B) Eight (8) months--Procurement complete for contractors used for rehabilitation and reconstruction activities, 25% of the households to be assisted environmentally cleared;

(C) Twelve (12) months--Eligibility determined on 100% of the households receiving assistance under Homeowner Assistance Programs, 50% of the funds committed to eligible households, and 10% of the project funds drawn;

(D) Eighteen (18) months--100% of the project funds must be committed to the households receiving assistance, 50% of the homes must be under construction or rehabilitation, and 25% of the project funds drawn;

(E) Twenty-two (22) months--100% of the construction for all homes must be complete, 75% of the project funds drawn; and

(F) Twenty-four (24) months--85% of project funds are drawn, close out must be complete within sixty (60) days of end of contract.

(2) CDBG Rental Activities. The Contract term will not exceed twenty-four (24) months. Performance under the Contract and State administered programs will be based on the following benchmarks from the Contract begin date:

(A) Six (6) months--The RFP or NOFA, as applicable, must be published;

(B) Eight (8) months--Developments must be selected under rental programs and environmentally cleared;

(C) Twelve (12) months--Loan closing must be closed for any rental components and 10% of project funds drawn;

(D) Eighteen (18) months--50% of project funds drawn;

(E) Twenty-two (22) months--75% of the project funds drawn; and

(F) Twenty-four (24) months--100% of construction complete, certificates of occupancy issued, 95% of funds drawn. Close out must be complete within sixty (60) days of end of contract.

(3) CDBG Disaster Downpayment Homeownership Assistance Activities. The Contract term will not exceed twenty-four (24) months. Performance under the Contract will be based on the following benchmarks from the Contract begin date:

(A) Six (6) months--Pool of applicants identified, eligibility assessment begun including site specific environmental on a minimum of 25% of applicants;

(B) Twelve (12) months--Eligibility determination made on 100% of applicants, 25% of the project funds drawn;

(C) Eighteen (18) months--50% of the applicants assisted, 45% of project funds drawn; and

(D) Twenty-four (24) months--100% of the applicants assisted, 75% of project funds drawn. Close out must be complete within sixty (60) days of end of contract.

(b) The Executive Director of the TDHCA may grant one extension to revise benchmarks and/or lower percentages, due to good cause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

TRD-200902947

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 475-3916



TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 31. AGENCY PROCEDURES

13 TAC §§31.1 - 31.5, 31.8, 31.10

The Texas Commission on the Arts (Commission) proposes to amend Chapter 31, §§31.1 - 31.5, 31.8, and 31.10, concerning Agency Procedures.

The purpose of the proposed amendments is to ensure consistent use of language throughout Title 13, Part 3 of the Texas Administrative Code.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendments as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the clarification of agency programs thereby allowing more Texas organizations, communities, and citizens to access agency information. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on August 14, 2009.

The amendments are proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§31.1. Purpose.

The Commission [eommission] shall carry out the purpose prescribed by law to the Texas Commission on the Arts.

§31.2. Officers.

(a) The officers of the Commission [eommission] shall be a chair [chairman], (the immediate past Chair [chairman] if still a member of the Commission [eommission]), a vice chair [chairman], a secretary, a treasurer, and a parliamentarian. These officers shall perform the functions prescribed by law or assigned them by the Commission [eommission] from time to time and shall perform all functions customarily performed by such officer.

(b) The Chair shall be appointed by the Governor of Texas.

(c) Two members of the Commission shall be residents of a county with a population of less than 50,000.

(d) All officers shall be elected from the membership of the Commission [eommission] for a one-year term.

(e) Election of officers shall be held annually at the first meeting of the fiscal year. Newly elected officers will assume their positions immediately. [at the regular June meeting of each year and will take office the following September.]

(f) Should an officer resign, the Chair [chairman] will appoint a successor.

(g) The Chair [chairman] shall preside at all meetings of the Commission [eommission]. If the Chair [chairman] is unavailable, the vice chair [chairman] shall act in the Chair's stead.

(h) No member shall hold more than one office at a time.

(i) No member shall serve more than two consecutive full terms in any one office.

(j) The Chair shall serve at the pleasure of the Governor.

§31.3. Meetings.

(a) The Commission [eommission] shall hold at least four regular business meetings annually[; normally in September, December, March, and June]. A majority of the Commissioners [eommissioners] will set the date of regular meetings. [Grant applications submitted to the commission will normally be considered at its June meeting.]

(b) The Chair [chairman], Executive Committee [executive committee], or a majority of the Commissioners [eommissioners] may call a special meeting of the Commission [eommission] at any time by giving at least one week's notice to all Commissioners [eommissioners].

(c) The Chair [chairman] or a majority of the Commissioners [eommissioners] will designate the place of all meetings.

(d) One-third of the members of the Commission [eommission] shall constitute a quorum and whenever a majority vote of the Commission [eommission] is required, this is deemed to mean a majority of those members present at a meeting having a quorum.

(e) No proxies are permitted at any meeting of the Commission [eommission].

(f) At least 10 days prior to regular meetings, the staff shall furnish the members with necessary materials.

§31.4. Committees.

(a) All committee chairs [chairmen], with the exception of the chairs [chairmen] of the Grants and Services Committee and the Finance Committee, and committee members shall be appointed by the Commission Chair [eommission chair].

(b) The term of all committee memberships shall be until the next Commission [eommission] meeting following the termination of the term of the Chair [chair] who appointed them, or such earlier date as the Chair [chair] may designate, or until their replacement has been named.

(c) All vacancies on any committee shall be filled by the Chair [chair].

(d) The Chair [chair] shall be an ex officio member of each committee.

(e) A quorum at each committee meeting shall consist of one-half of its members.

[(f) Summary minutes will be kept of all standing committee meetings, copies of which shall be distributed to all commission members within 30 days after the meeting.]

(f) [(g)] The standing committees shall be the following.

(1) The [the] Executive Committee is made up of the Chair [chair], vice chair, secretary, treasurer, parliamentarian, and two members at large appointed at the pleasure of the Chair [chair]. The committee may recommend to the Commission [eommission] policies and guidelines and may work with the Executive Director [executive director] in developing and implementing such policies.

(2) The [the] Finance Committee shall consist of at least three members, and be chaired by the treasurer. The committee may recommend to the Commission [eommission] financial policies and guidelines and may work with the Executive Director [executive director] in developing and implementing such policies [and shall conduct

an annual review and evaluation of commission activity and develop and control internal operating budgets].

(3) The [the] Grants and Services Committee shall consist of at least three members and shall [review, with assistance from the staff and advisory panels, applications submitted to the commission and then] make recommendations to the Commission regarding grant awards [commission]. The vice chair of the Commission [commission] shall serve as the chair [chairman] of this committee. [The committee shall recommend to the commission grant submission criteria. Funding is approved contingent upon the submission of appropriate documentation and final approval by the Executive Director or his designee(s). Funding will occur on or after September 1 of every year.]

(4) The [the] Legislative Committee is a committee of the whole of the Commission [commission] with a designated chair. This committee shall be responsible for the implementation [development and initial approval] of legislative approaches and strategies of the Commission. [commission: Reports and recommendations will be presented to the commission.]

(5) The Officer Nominating Committee shall consist of three members, the committee chair [chairman] to be appointed by the Commission Chair [commission chair] and the other two members to be selected at large by the Commission [commission]. The committee shall select a slate of nominees to serve as officers of the Commission [commission] and shall recommend this slate of nominees to the Commission [commission at its quarterly meeting in June].

(g) [h)] Special committees may be appointed from time to time by the Chair [chair] who shall designate the duties and term of such committees.

§31.5. Staff.

(a) Within the policies and guidelines established by the Commission [commission], the Executive Director [executive director] shall have the responsibility to develop programs, employ staff, and to carry out operations. The Executive Director [executive director] shall be an ex officio member of all Commission [commission] committees except the Officer Nominating Committee.

(b) No employee of the Commission [commission] shall accept any office, employment, or position on any committee, governing board, or other position of possible influence, authority, or responsibility with any organization connected with the arts, whether with or without compensation, without the prior consent of the Executive Director [executive director] and the Commission [commission]. No employee of the Commission [commission] shall accept any honorarium or other remuneration for services rendered to any arts organization, nor own any interest in any arts organization or engage in any business or enterprise connected with the arts without the prior consent of the Executive Director [executive director] and the Commission [commission]. It is anticipated that consent to any such outside activity will not be granted in the event the organization is one which is eligible to be a grantee of the Commission [commission] or which is affiliated with one or more organizations which are eligible to be grantees of the Commission [commission].

(c) The term "employee" as used in this section is not deemed to include consultants or advisors to the Commission [commission] who are engaged on a contractual basis from time to time to advise the Commission [commission] on limited, specific matters.

§31.8. Travel.

(a) All staff travel must have prior approval of the Executive Director [executive director] or his designee.

(b) All travel by the Commissioners [commissioners] (other than to and from Commission [commission] and committee meetings) must be approved by the Chair [chairman].

§31.10. Grant [Financial Assistance] Application Form.

The Commission [commission] adopts by reference application forms and instructions for the Grant [Financial Assistance] Application Form as outlined in A Guide to Programs and Services as amended July 2009 [A Guide to Operations, Programs, and Services as amended December 2003]. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2009.

TRD-200902919

Gary Gibbs, Ph.D.

Executive Director

Texas Commission on the Arts

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For further information, please call: (512) 936-6562



13 TAC §31.6, §31.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on the Arts (Commission) proposes to repeal Chapter 31, §31.6, concerning Required Advisory Panel Meetings and Required Advisory Panel Member Resignation upon Relocation Out-of-State, and §31.9, concerning Parliamentary Authority.

The purpose of the proposed repeals is to be consistent with changes to programs and services of the Commission as outlined in the Guide to Programs and Services as amended July 2009 in §35.1.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the amendment will be the clarification of agency programs thereby allowing more Texas organizations, communities, and citizens to access agency information. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect to small or micro businesses.

Comments on the proposed repeal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on August 14, 2009.

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§31.6. *Required Advisory Panel Meetings and Required Advisory Panel Member Resignation upon Relocation Out-of-State.*

§31.9. *Parliamentary Authority.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary Gibbs, Ph.D.

Executive Director

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CHAPTER 32. MEMORANDA OF UNDERSTANDING

13 TAC §32.1

The Texas Commission on the Arts (Commission) proposes the amendment of §32.1, concerning Memoranda of Understanding.

The purpose of the proposed amendment is to ensure consistent use of language throughout Title 13, Part 3 of the Texas Administrative Code.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the clarification of agency programs thereby allowing more Texas organizations, communities, and citizens to access agency information. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on August 14, 2009.

The amendment is proposed under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§32.1. *Memoranda of Understanding.*

(a) The Commission [Texas Commission on the Arts (TCA)] shall enter into Memorandum of Understanding (MOU) agreements as outlined in §444.030 of the Texas Government Code.

(b) The Commission [TCA] may enter into additional MOU agreements with other state agencies and/or partners. MOU agreements may result from Legislation or be initiated by the Commission for the purpose of furthering the agency's mission and goals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary Gibbs, Ph.D.

Executive Director

Texas Commission on the Arts

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For further information, please call: (512) 936-6562



CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts (Commission) proposes the amendment of §35.1, concerning a Guide to Programs and Services.

The purpose of the proposed amendment is to be consistent with changes to programs and services of the Commission as revised July 2009.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the clarification of agency programs thereby allowing more Texas organizations, communities, and citizens to access agency information. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There will be no effect to small or micro businesses.

Comments on the proposal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on August 14, 2009.

The amendment is proposed under the Texas Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§35.1. *A Guide to Programs and Services.*

The Commission [~~commission~~] adopts by reference A Guide to Programs and Services (revised July 2009 [~~October 2008~~]). This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711. This document is also available online at www.arts.state.tx.us.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary Gibbs, Ph.D.
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CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22, 37.24, 37.28, 37.29

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on the Arts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on the Arts (Commission) proposes to repeal Chapter 37, §§37.22, 37.24, 37.28, and 37.29, concerning Application Forms and Instructions for Financial Assistance.

The purpose of the proposed repeal is to be consistent with changes to programs and services of the Commission as outlined in the Guide to Programs and Services as amended July 2009 in §35.1.

Gary Gibbs, Executive Director, Texas Commission on the Arts, has determined that, for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Mr. Gibbs also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the amendment will be the clarification of agency programs thereby allowing more Texas organizations, communities, and citizens to access agency information. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect to small or micro businesses.

Comments on the proposed repeal may be submitted to Gaye Greever McElwain, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted through 5:00 p.m. on August 14, 2009.

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statutes, articles, or codes are affected by this proposal.

§37.22. *Application Form and Instructions for Artist-in-Education Program--Artist.*

§37.24. *Application Form and Instructions for Texas Touring Arts Program--Company/Artist.*

§37.28. *Application Form and Instructions for Arts Education Service Provider.*

§37.29. *Application Form and Instructions for Young Masters Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary Gibbs, Ph.D.
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER H. P-16 COLLEGE READINESS AND SUCCESS

19 TAC §4.177

The Texas Higher Education Coordinating Board proposes amendments to §4.177, concerning Criteria for Student Participation and Institutional and Public School Eligibility for Implementing Programs to Enhance Student Success. Specifically, the amendments to this section replace the term "Summer" with "Higher" and clarify that "Higher Education Bridge Programs" will be provided to eligible students during summer or other time frames approved by the Coordinating Board. Social Science will be added to the focus of the summer program. A definition of intensive programs is added and clarifies the purpose of the program, student eligibility, as well as requirements for the implementation of the program. The amendments are mandated by Senate Bill 2258, 81st Texas Legislature, and reflect changes to the program requirements for Higher Education Bridging Programs for the 2010-2011 academic year and later.

Dr. Judy Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more clarity regarding program requirements and consistency in administering all higher education bridging programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Belinda Perez-Hernandez, P.O. Box 12788, Austin, Texas 78711, (512) 427-6209, belinda.hernandez@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.0762, which provides the Coordinating Board with the authority to adopt rules to implement higher education bridging programs.

The amendments affect Texas Education Code, §61.0762.

§4.177. Criteria for Student Participation and Institutional and Public School Eligibility for Implementing Programs to Enhance Student Success.

(a) Higher [Summer] education bridge programs. The purpose of this program is for institutions of higher education to provide public high school students and other eligible students who are not college-ready with appropriate instruction and other activities during summer or other timeframes approved by the Coordinating Board [programs] to ensure eligible students achieve college readiness.

(1) Only institutions offering [summer] bridge programs outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) The [Each year for which the state appropriations or other funding is available; the] commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement [summer] bridge programs under this subsection. The focus of these programs shall include mathematics, science, social science, and/or English language arts for the following categories of public high school students:

(A) - (B) (No change.)

(3) Other qualifications or requirements for student participation, public school eligibility, and institutional eligibility for implementing [summer] bridge programs shall be outlined in the request for proposal/application, memorandum of understanding, or other agreement.

(b) Developmental education initiatives. The purpose of this program is to provide incentive funding to institutions who commit to implementing research-based and/or innovative developmental education initiatives.

(1) (No change.)

(2) The [Each year for which the state appropriations or other funding is available; the] commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement developmental education initiatives under this subsection. The focus of these programs shall include mathematics, science, social science, and/or English language arts for students who have not met the minimum passing standards for college readiness as outlined under §4.57 of this title [(relating to Minimum Passing Standards)] or who are not exempt from requirements of the Texas Success Initiative as outlined under §4.54 of this title [(relating to Exemptions/Exceptions)].

(c) Intensive programs. The purpose of this program is for institutions of higher education to provide eligible students who are at risk of dropping out of college with appropriate instruction and other activities during summer or other timeframes approved by the Coordinating Board to ensure students persist and complete an undergraduate credential or degree.

(1) Only institutions offering intensive programs outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) The commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement intensive programs under this subsection. The focus of these programs shall include mathematics, science, social science, and/or English language arts. The categories of students to be served by these programs shall be outlined in the request for proposal/application, memorandum of understanding, or other agreement as identified by the commissioner

to address the participation and success goals of Closing the Gaps by 2015.

~~[(e) Financial aid for college readiness and college entrance assessments. The purpose of this program is to obtain early assessments of college readiness and preparation of high school students.]~~

~~[(1) Financial aid shall be provided for each eligible high school student on an annual basis as determined by the commissioner.]~~

~~[(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall determine the college readiness and college entrance assessments that will be funded under this subsection.]~~

(d) Professional development for higher education faculty. The purpose of this program is to provide higher education faculty with professional development programs or activities on college readiness standards and the implications of these standards on instruction.

(1) (No change.)

(2) The [Each year for which state appropriations or other funding is available; the] commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement activities or programs of professional development for faculty under this subsection. The focus of these programs shall be limited to faculty who have responsibilities for developmental education and entry-level courses and to the knowledge and skills, reflected in the college readiness standards, that faculty can reasonably expect students to have achieved who are entering those courses from public schools.

(3) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 14, 2009.

TRD-200902875

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 29, 2009

For further information, please call: (512) 427-6114



SUBCHAPTER L. INTENSIVE SUMMER PROGRAM GRANTS

19 TAC §§4.210 - 4.214

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board proposes the repeal of §§4.210 - 4.214, concerning Intensive Summer Program Grants.

Specifically, these sections are proposed for repeal in order to incorporate Intensive Summer Programs into §4.177, which would implement Senate Bill 2258, 81st Texas Legislature. Senate Bill 2258 moves the statutory authority for the higher

education Intensive Summer Programs into Texas Education Code, §61.0762, Programs to Enhance Student Success. Section 4.177 of Coordinating Board rules address all the programs established by this section of Texas statutes.

Dr. Judy Loreda, Assistant Commissioner for P-16 Initiatives, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal as proposed.

Dr. Loreda has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be more clarity regarding program requirements and consistency in administering all higher education bridging programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Belinda Perez-Hernandez, P.O. Box 12788, Austin, Texas 78711, (512) 427-6209, belinda.hernandez@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.0762 which provides the Coordinating Board with the authority to adopt rules to implement the program.

The repeal affects Texas Education Code, §61.0762.

§4.210. *Purpose and Authority.*

§4.211. *Definitions.*

§4.212. *Eligible Students.*

§4.213. *Eligible Institutions.*

§4.214. *Grant Administration.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING THE JOB CORPS DIPLOMA PROGRAM

19 TAC §97.2001

The Texas Education Agency (TEA) proposes amendment to §97.2001, concerning the Job Corps diploma program. The section implements the requirements of the Texas Education Code

(TEC), §18.006, that the commissioner develop and implement a system of accountability to rate the annual performance of the Job Corps diploma program. The section also adopts the most recently published Job Corps diploma program accountability procedures manual. The proposed amendment would adopt the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2008, and incorporate other applicable updates to the rule.

Effective December 10, 2006, the commissioner adopted 19 TAC §97.2001, exercising rulemaking authority over developing and implementing a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072. Section 97.2001 includes the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2007, in rule as a figure. The intention is to annually update 19 TAC §97.2001 to refer to the most recently published *Job Corps Diploma Program Accountability Procedures Manual*.

The proposed amendment to 19 TAC §97.2001 would update the rule to adopt the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2008, as a figure. The proposed amendment to adopt the new manual would prescribe the specific procedures, standards, and performance indicators by which Job Corps diploma programs will be evaluated and rated in 2009.

Revisions in the new manual include: (1) updates to year references to make the document current; (2) a change in the manner by which the TEA will release data and rating reports; and (3) other applicable clarifications such as updating the name of the TEA office to which program information must be submitted.

The proposed amendment to 19 TAC §97.2001 would also update rule text, as follows.

Technical edits would be made in subsections (c) and (f)(1)(A) to clarify the student performance assessment requirements for the Job Corps diploma program. Corresponding technical edits would also be made in the *Job Corps Diploma Program Accountability Procedures Manual*.

Subsection (d) would be updated to reference the 2008 *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2008, and ratings issued in 2009. Additionally, subsection (d) would be updated to specify that the manual adopted for each year prior to 2009 would remain in effect for the applicable school year.

Technical edits would be made in subsection (g) to clarify reference to statute.

The proposed amendment to 19 TAC §97.2001 would continue the reporting requirements to address the characteristics of the students served by the Job Corps diploma program. Alternative collection methods were considered; however, based on the number and frequency of data submissions to the TEA, it was determined that electronic submission via the TEA Secure Environment (TEASE) would incur higher costs to the TEA than simple paper submission. The proposed amendment would not require additional paperwork beyond that already maintained.

Julie Harris-Lawrence, deputy associate commissioner for student services and GED, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Harris-Lawrence has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule action will be to continue to inform the public of the existence of the procedure manual and current procedures, standards, and performance indicators by which the diploma programs are evaluated and rated. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins July 31, 2009, and ends August 31, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463- 0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on July 31, 2009.

The amendment is proposed under the Texas Education Code, §18.006, which requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts.

The amendment implements the Texas Education Code, §18.006.

§97.2001. *Job Corps Diploma Program Accountability Procedures.*

(a) Intent and purpose. The Job Corps diploma program develops and implements educational programs specifically designed for persons eligible for enrollment in a Job Corps training program established by the U.S. Department of Labor. The Job Corps diploma program was established in order for eligible students to satisfy the requirements necessary to receive a high school diploma.

(b) Student eligibility. A person is eligible to participate in the Job Corps diploma program if the person is enrolled in an established Job Corps training program and has not satisfied the state requirements to receive a high school diploma. Any person enrolled in good standing in the Job Corps diploma program is eligible for programs or services under the Texas Education Code (TEC), Chapter 18. A person's eligibility for programs and services under the TEC, Chapter 18, does not make a person ineligible for an education program or service under any other chapter of the TEC.

(c) Program requirements. The TEC, §1.001, applies to a Job Corps diploma program operated by or under contract with the U.S. Department of Labor.

(1) The Job Corps diploma program shall provide a course of instruction that includes the required curriculum under the TEC, §28.002, §74.1 of this title (relating to Essential Knowledge and Skills), and §74.3 of this title (relating to Description of a Required Secondary Curriculum).

(2) The Job Corps diploma program shall offer, annually, at least all the courses required for an eligible student to graduate under the applicable minimum high school program described in Chapter 74 of this title (relating to Curriculum Requirements).

(3) A student enrolled in the Job Corps diploma program must satisfy the appropriate Texas Assessment of Knowledge and Skills assessments required for graduation [under the TEC, §39.025,] before receiving a high school diploma.

(d) Accountability procedures. Job Corps diploma program evaluations and ratings issued in 2009 [2008] are based upon specific procedures, standards, and performance indicators, which are described in the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2008, [August 2007,] provided in this subsection. The specific procedures, standards, and performance indicators used in the *Job Corps Diploma Program Accountability Procedures Manual* adopted for use prior to 2009 [2008] remain in effect for all purposes, including accountability, data standards, and audits, with respect to the applicable school year.

Figure: 19 TAC §97.2001(d)

[Figure: 49 TAC §97.2001(d)]

(e) Annual review. The Texas Education Agency (TEA) shall conduct an annual review to evaluate Job Corps diploma program performance based on indicators provided in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section. The diploma program shall comply with all applicable requirements of state laws and rules.

(f) Performance indicators. Annually, the commissioner of education shall review and determine the student performance indicators appropriate to the characteristics of the students served by the Job Corps diploma program. The performance of the Job Corps diploma program shall be evaluated on the basis of the specific indicators as determined by the commissioner of education.

(1) The annual evaluation shall be based on, at a minimum, the following performance indicators:

(A) student performance on appropriate grade levels and subject areas assessed by the Texas Assessment of Knowledge and Skills [assessment instruments required under the TEC, §39.023];

(B) dropout rate for the grade levels served; and

(C) diploma program completion rate.

(2) To the extent appropriate, the annual performance review shall incorporate other indicators from the Academic Excellence Indicator System (AEIS) under the TEC, Chapter 39.

(g) Accountability ratings and criteria. The procedures for determining the Job Corps diploma program accountability ratings are established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(1) The Job Corps diploma program performance on selected AEIS indicators shall be used by the TEA in determining the annual performance rating of the Job Corps diploma program.

(2) A performance rating assigned to the Job Corps diploma program may be appealed to the commissioner of education in accordance with the procedures established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(3) The commissioner of education may lower the Job Corps diploma program accountability rating based on the findings of an on-site investigation conducted under the TEC, Chapter 39 [§39.074].

(4) If a Job Corps diploma program is below a any standard set under the TEC, Chapter 39, for an accountability indicator used for performance ratings [§39.073(b)], the program is considered a low-performing program. If the Job Corps diploma program is low

performing for a period of two consecutive years or more, the commissioner of education may close the program.

(h) Reporting of data. The Job Corps diploma program shall report to the TEA accountability data on a submission schedule determined by the TEA. Performance data shall be disaggregated with respect to student attributes as determined by the commissioner of education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 475-1497



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

The Texas Education Agency (TEA) proposes amendments to §§150.1001, 150.1003 - 150.1007, and 150.1010 and the repeal of §150.1008, concerning teacher appraisal. The rules in 19 TAC Chapter 150, Subchapter AA, address provisions relating to the Professional Development and Appraisal System (PDAS). The proposed revisions would update and clarify PDAS provisions.

The 74th Texas Legislature, 1995, created the requirements for appraisal of teacher performance. In accordance with the Texas Education Code (TEC), §21.351, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, establishing the PDAS. The rules in 19 TAC Chapter 150, Subchapter AA, address provisions on appraisals, data source documentation, conferences, intervention plans, written responses, appraiser qualifications, and teacher orientation. The proposed revisions to 19 TAC Chapter 150, Subchapter AA, would update and clarify the PDAS requirements, as follows.

Section 150.1001, General Provisions, would be amended by adding new subsection (d) to specify in rule the commissioner's authority to appoint a regional education service center to manage the instructional and management aspects of the PDAS. Subsection (d) would also specify in rule the policy that has been in effect since 2001 that the designated regional education service center may collect appropriate fees.

Section 150.1003, Appraisals, Data Sources, and Conferences, would be amended throughout to clarify that the term "appraiser" refers to an individual who is actually a "certified appraiser."

Section 150.1004, Teacher in Need of Assistance, would be amended in subsection (b) to define who would be considered a teacher's supervisor. Clarification of the term "certified appraiser" would also be made in subsections (b) and (f) as well as minor, technical corrections throughout the section.

Section 150.1005, Teacher Response and Appeals, would be amended throughout to clarify the term "certified appraiser." Mi-

nor, technical corrections would also be made throughout the section.

Section 150.1006, Appraiser Qualifications, would be amended by adding new subsection (b) to define campus administrator and specify that a qualified campus administrator would conduct a teacher's appraisal. Clarifications and technical corrections would be made in subsection (c). New subsection (d) would clarify existing provisions relating to a certified appraiser who is a classroom teacher.

Section 150.1007, Teacher Orientation, would be amended in subsection (a) to add the requirement that teachers to be appraised shall be provided with an annual review of 19 TAC Chapter 150, Subchapter AA.

Section 150.1008, Training of Teacher Participants, would be repealed since it is obsolete and no longer needed.

Section 150.1010, District Notification to Regional Education Service Center, would be amended to add new subsection (b) requiring each school district to report the summary of the evaluation scoring of PDAS appraisals for all campuses in the school district. The section title would also be updated accordingly.

The proposed amendment to 19 TAC §150.1010 would require each school district to report campus-level information on teacher ratings to its regional education service center. This reporting will be required whether a district uses PDAS or a locally adopted instrument. The proposed amendments and repeal would not require additional locally maintained paperwork beyond what is already maintained. Districts already have the evaluation scoring of their employees.

Jerel Booker, associate commissioner for educator quality and standards, has determined that for the first five-year period the amendments and repeal are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments and repeal. The new language in 19 TAC §150.1001 relating to collection of fees specifies in rule the policy that has been in effect since 2001. The new language in 19 TAC §150.1010 relating to reporting evaluation scoring should not create a new cost since the information is already collected from districts.

Mr. Booker has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the rule actions will be improved standardization of teacher appraisals throughout the state. This improvement should provide for improved accuracy in teacher appraisals leading to increased rigor for students in classrooms. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeal.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins July 31, 2009, and ends August 31, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more

than 15 calendar days after notice of the proposal has been published in the *Texas Register* on July 31, 2009.

19 TAC §§150.1001, 150.1003 - 150.1007, 150.1010

The amendments are proposed under the Texas Education Code, §21.351, which authorizes the commissioner of education to adopt a recommended appraisal process and criteria on which to appraise the performance of teachers.

The amendments implement the Texas Education Code, §21.351 and §21.352.

§150.1001. General Provisions.

(a) Beginning with the 1997-1998 school year, all school districts have two choices in selecting a method to appraise teachers: a teacher-appraisal system recommended by the Texas commissioner of education or a local teacher-appraisal system.

(b) The commissioner's recommended teacher-appraisal system, the Professional Development and Appraisal System (PDAS), was developed in accordance with Texas Education Code (TEC), §21.351.

(c) The superintendent of each school district, with the approval of the school district board of trustees, may select the PDAS. Each school district or campus wanting to select or develop an alternative teacher-appraisal system must follow TEC, §21.352.

(d) The commissioner may designate a regional education service center to serve as the PDAS certification provider for the state. The designated regional education service center may collect appropriate fees under TEC, §8.053, from school districts and open-enrollment charter schools for training and certification.

§150.1003. Appraisals, Data Sources, and Conferences.

(a) Each teacher must be appraised each school year, except as provided by subsection (l) of this section. Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified.

(b) The annual teacher appraisal shall include:

(1) at least one classroom observation of a minimum of 45 minutes as identified in subsection (g) of this section, with additional walk-throughs and observations conducted at the discretion of the certified appraiser;

(2) a written summary of each observation, which shall be given to teachers within ten working days after the completion of an observation, with a pre- and post-observation conference conducted at the request of the teacher or certified appraiser;

(3) completion of Section I of the Teacher Self-Report Form that shall be presented to the principal:

(A) within the first three weeks from the day of completion of the Professional Development and Appraisal System (PDAS) orientation as described in §150.1007 of this title (relating to Teacher Orientation);

(B) within the first three weeks from the day of completion of the PDAS orientation as described in §150.1007 of this title for teachers new to the PDAS; or

(C) within the first three weeks of instruction in the school years when the PDAS orientation is not required pursuant to §150.1007 of this title.

(4) revision of Section I (if necessary) and completion of Sections II and III of the Teacher Self-Report Form that shall be presented to the principal at least two weeks prior to the summative annual conference;

(5) cumulative data of written documentation collected regarding job-related teacher performance, in addition to formal classroom observations;

(6) a written summative annual appraisal report; and

(7) a summative annual conference.

(c) A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required.

(d) Each school district shall establish a calendar for the appraisal of teachers. The appraisal period for each teacher must include all of the days of a teacher's contract. Observations during the appraisal period must be conducted during the required days of instruction for students during one school year. The appraisal calendar shall:

(1) exclude observations in the three weeks following the day of completion of the PDAS orientation in the school years when an orientation is required as described in §150.1007 of this title;

(2) exclude observations in the three weeks following the day of completion of the PDAS orientation for teachers new to the PDAS as described in §150.1007 of this title;

(3) exclude observations in the first three weeks of instruction in the school years when the PDAS orientation is not required pursuant to §150.1007 of this title;

(4) prohibit observations on the last day of instruction before any official school holiday or on any other day deemed inappropriate by the school district board of trustees; and

(5) indicate a period for summative annual conferences that ends no later than 15 working days before the last day of instruction for students.

(e) During the appraisal period, the certified appraiser shall evaluate and document teacher performance specifically related to the domain criteria as identified in §150.1002(b) of this title (relating to Assessment of Teacher Performance).

(f) The certified appraiser is responsible for documentation of the cumulative data identified in subsection (b)(5) of this section. Any third-party information from a source other than the certified appraiser [teacher's supervisor] that the certified appraiser wishes to include as cumulative data shall be verified and documented by the certified appraiser. Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within ten working days of the certified appraiser's knowledge of the occurrence. The principal shall also be notified in writing when the certified appraiser is not the teacher's principal.

(g) By mutual consent of the teacher and the certified appraiser, the required minimum of 45 minutes of observation may be conducted in shorter time segments. The time segments must aggregate to at least 45 minutes.

(h) A written summative annual appraisal report shall be shared with the teacher no later than five working days before the summative conference and no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher's personnel file by the end of the appraisal period.

(i) Unless waived in writing by the teacher, a summative conference shall be held within a time frame specified on the school district calendar and no later than 15 working days before the last day of instruction for students. The summative conference shall focus on the written summative report and related data sources.

(j) In cases where the certified appraiser is not an administrator on the teacher's campus, either the principal, assistant principal, or another supervisory staff member designated as an administrator on the campus must ~~will~~ participate in the summative annual conference.

(k) Any documentation collected after the summative conference but before the end of the contract term during one school year may be considered as part of the appraisal of a teacher. If the documentation affects the teacher's evaluation in any domain, another summative report shall be developed and another summative conference shall be held to inform the teacher of the change(s).

(l) Except as otherwise provided by this subsection, appraisal must be done at least once during each school year. A teacher may be appraised less frequently if the teacher agrees in writing and the teacher's most recent appraisal rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years.

(1) District policy may stipulate:

(A) whether the appraisal option is to be made available to teachers;

(B) whether the appraisal option is to be adopted districtwide or is to be campus specific;

(C) if the appraisal accompanying a teacher new to a district or campus meets the option as specified in this subsection, whether the appraisal is to be accepted or whether that teacher is to be appraised by the new campus administrator; and

(D) whether a certified ~~an~~ appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented in accordance with subsections (b)(5) and (f) of this section.

(2) A school district may choose annually to review the written agreement with the teacher. However, at the conclusion of the school year, the district may modify appraisal options through board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher's participation in the appraisal option in the previous year(s).

(3) For purposes of this subsection, in the teacher-appraisal system recommended by the commissioner, an area of deficiency is a domain. A teacher must be rated as at least proficient for each domain (i.e., for all domains) to be eligible for less frequent appraisals under this subsection.

§150.1004. Teacher in Need of Assistance.

(a) A teacher whose performance meets one ~~any~~ of the following circumstances will be designated as a "teacher in need of assistance":

(1) a teacher who is evaluated as unsatisfactory in one or more domains; or

(2) a teacher who is evaluated as below expectations in two or more domains.

(b) When a teacher is designated as a teacher in need of assistance, the certified appraiser and ~~and/or~~ the teacher's supervisor, defined as department chair, instructional facilitator, mentor, or other instructional supervisory staff as designated by the certified appraiser, shall, in consultation with the teacher, develop an intervention plan that includes the following:

(1) domain(s) that designate a teacher as a teacher in need of assistance;

(2) directives or recommendations for professional improvement activities;

(3) evidence that is used to determine successful completion of professional improvement activities;

(4) directives for changes in teacher behavior;

(5) evidence that is used to determine if teacher behavior has changed; and

(6) specific time line for successful completion.

(c) In cases when the teacher's appraiser is not the teacher's principal, the principal shall be involved in the development and evaluation of the intervention plan.

(d) A teacher who has not met all requirements of the intervention plan for teachers in need of assistance by the time specified may be considered for separation from the assignment, campus, and/or district.

(e) The intervention plan shall include options for professional development activities designed to enhance teacher proficiency. At least one option shall not place significant financial burden on either the teacher or the school district.

(f) An intervention plan may be developed at any time at the discretion of the certified appraiser when the certified appraiser has documentation that would potentially produce an evaluation rating of "below expectations" or "unsatisfactory."[-]

§150.1005. Teacher Response and Appeals.

(a) A teacher may submit a written response or rebuttal at one or both of the following times:

(1) after receiving a written observation summary, or any other written documentation associated with the teacher's appraisal; or ~~and/or~~

(2) after receiving a written summative annual appraisal report.

(b) Any written response or rebuttal must be submitted within ten working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. At the discretion of the certified appraiser, the time period may be extended to 15 working days.

(c) A teacher may request a second appraisal by another certified appraiser at one or both of the following times:

(1) after receiving a written observation summary with which the teacher disagrees; or ~~and/or~~

(2) after receiving a written summative annual appraisal report with which the teacher disagrees.

(d) The second appraisal must be requested within ten working days of receiving a written observation summary or a written summative annual appraisal report. At the discretion of the certified appraiser, the time period may be extended to 15 working days.

(e) A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

(f) The second appraiser shall appraise the teacher in all domains. The second appraiser shall make observations and walk-throughs as necessary to evaluate Domains I through V. The second appraiser shall use the Teacher Self-Report Form and cumulative data from the first appraisal to evaluate Domains VI through VIII. Cumulative data may also be used by the second appraiser to evaluate other domains.

(g) Each school district shall adopt written procedures for a teacher to present grievances and receive written comments in response to the written annual report. Each district shall also adopt written procedures for determining the selection of second appraisers. These procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

§150.1006. Appraiser Qualifications.

(a) The teacher-appraisal process requires at least one certified appraiser.

(b) Under the Professional Development and Appraisal System (PDAS), a campus administrator includes a principal, an assistant principal, or other supervisory staff designated as an administrator of an open-enrollment charter school or as an administrator who holds a comparable administrator/supervisor certificate established by the State Board for Educator Certification. A campus administrator who is a certified PDAS appraiser and approved by the school district board of trustees shall conduct a teacher's appraisal. Only in the event of the circumstances identified in subsection (d) of this section may an individual other than a campus administrator act as a certified appraiser.

~~[(b) The teacher's supervisor shall conduct the teacher's appraisal and must hold a superintendent, mid-management (principal), or supervisor certification, or must hold comparable certificates established by the State Board for Educator Certification. An appraiser other than the teacher's supervisor must be approved by the school district board of trustees, hold a valid teaching certificate, and have at least three years of prekindergarten, elementary, or secondary teaching experience.]~~

~~[(c) An appraiser who is a classroom teacher may not appraise the performance of another classroom teacher who teaches at the same school campus at which the appraiser teaches, unless it is impractical because of the number of campuses or unless the appraiser is the chair of a department or grade-level whose job description includes classroom observation responsibilities.]~~

(c) ~~[(d)]~~ Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed uniform appraiser training, including required Instructional Leadership Training (ILT) or Instructional Leadership Development (ILD) certification [training], with a trainer and curriculum approved by the commissioner of education. Periodic recertification and training shall be required.

(1) Educators certified as appraisers for the Texas Teacher Appraisal System (TTAS) before January 1997 shall be required to take only the PDAS [Professional Development and Appraisal System (PDAS)] training to qualify as a certified appraiser for the new system. Beginning June 1, 2002, individuals seeking to become certified PDAS appraisers must comply with requirements specified in paragraph (3) of this subsection [subsection (d)(3) of this section].

(2) Educators seeking certification as an appraiser for the PDAS after January 1, 1997, and no later than June 1, 2002, holding no prior TTAS certification, shall be required to complete the ILT or ILD training and the PDAS training with the successful completion of ILT or ILD certification [training] as a prerequisite to the PDAS training.

(3) Educators seeking certification as an appraiser for the PDAS after June 1, 2002, shall be required to complete ILD training and the PDAS training with successful completion of ILD certification [training] as a prerequisite to the PDAS training.

(d) A certified appraiser who is a classroom teacher may not appraise the performance of another classroom teacher who teaches at the same school campus at which the certified appraiser teaches, unless it is impractical because of the number of campuses or unless the certified appraiser is the chair of a department or grade-level whose job

description includes classroom observation responsibilities. A teacher who acts as a certified appraiser must complete the applicable requirements specified in subsection (c) of this section to become a certified appraiser.

§150.1007. Teacher Orientation.

(a) A school district shall ensure that all teachers are provided with an orientation of the Professional Development and Appraisal System (PDAS) no later than the final day of the first three weeks of school and at least three weeks before the first observation.

(1) Additional orientations shall be provided any time substantial changes occur in the PDAS.

(2) A teacher new to the district shall be provided with an orientation of the PDAS at least three weeks before the teacher's first observation.

(3) At least three weeks prior to the first formal observation, all teachers to be appraised under the PDAS shall be provided an annual review of this subchapter and district policy regarding teacher appraisal.

(b) Teachers' orientation shall include materials approved by the commissioner of education. These materials shall include all state and local appraisal policies, the local appraisal calendar, and information on the requirements for the completion of the Teacher Self-Report Form. In addition to the orientation, campuses may hold other sessions sufficient in length allowing teachers to actively participate in a discussion of the PDAS specifics and to have their questions answered.

§150.1010. District Submissions [Notification] to Regional Education Service Center.

(a) For purposes of providing training and support, the superintendent shall notify the executive director of its [the] regional education service center of the district's choice of appraisal system(s) by a time designated by the commissioner of education.

(b) Each school district shall submit annually to its regional education service center a summary of the Professional Development and Appraisal System evaluation scoring from all campuses in the school district in a manner prescribed by the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



19 TAC §150.1008

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Texas Education Code, §21.351, which authorizes the commissioner of education to adopt a recommended appraisal process and criteria on which to appraise the performance of teachers.

The repeal implements the Texas Education Code, §21.351 and §21.352.

§150.1008. *Training of Teacher Participants.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §361.6, which specifies certain fees charged by the Board, including fees for initial applications for licenses, endorsements, and registrations, as well as examinations, renewals and late renewal fees.

The proposed amendments to §361.6 are necessary in order for the Board to utilize revenue, as provided in Article VIII and Article IX of the General Appropriations Act (Senate Bill 1, 81st Legislature, Regular Session), which is contingent upon the Board assessing fees sufficient to generate \$1,085,520 in additional revenue, during the 2010 - 2011 biennium. Under the current fee structure, the Board will not generate enough revenue during the 2010 - 2011 biennium to meet the amount necessary for the Board to access the contingent revenue.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that, as a result of the amendments, there will be a fiscal impact to individuals who wish to obtain and renew the licenses or registrations, as shown below:

Figure 1: 22 TAC Chapter 361--Preamble

Mr. Maxwell has also determined that for the first five-year period that the amendments are in effect, persons who annually renew licenses and registrations will be fiscally impacted by paying increased license renewal fees over a five-year period, in the following amounts:

Figure 2: 22 TAC Chapter 361--Preamble

As required by §1301.403(e) of the Plumbing License Law, individuals who fail to renew any of the above stated licenses or registrations by the annual renewal date of the license or registration must pay an additional late fee in order to renew a license. Individuals who renew an expired license or registration within 90 days after the expiration of the license or registration will pay an additional increased late renewal fee equal to one-half of the

renewal fee. Individuals who renew an expired license or registration more than 90 days after the expiration of the license or registration will pay an additional increased late renewal fee equal to the renewal fee. As prohibited by §1301.403(d) of the Plumbing License Law, no individual may renew a license or registration that has been expired for two years or more.

Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill (HB) 3430, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. The Board licenses individuals and not businesses. Only individuals may hold a plumbing license, endorsement or registration and be required to pay examination, license, endorsement, registration, and renewal fees. Because the Board does not license businesses or require businesses to pay fees, the amendments will have no mandated adverse economic impact on small businesses.

Additionally, Mr. Maxwell has determined that each year of the first five years the amendments are in effect there should be no mandated adverse economic impact on local or state government.

The public benefit anticipated as a result of adopting these amendments will be the Board's ability to better protect the health, safety and welfare of the citizens by utilizing additional funding for administration and enforcement the Plumbing License Law and Board Rules. Administration and enforcement of the Plumbing License Law includes the investigation of consumer complaints, job-site compliance checks and pursuing action against persons who choose to endanger the health, safety and welfare of the citizens by violating the Plumbing License Law and Board Rules.

Comments on the proposed amendments may be submitted within 30 days of publication of these proposed amendments in the *Texas Register* to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.state.tx.us.

The amendments to §361.6 are proposed under and affect Title 8, Chapter 1301, Occupations Code ("Plumbing License Law" or "Act"), §§1301.251, 1301.253, and 1301.403, the rule it amends and the General Appropriation Acts, Article VIII, Board of Plumbing Examiners (Senate Bill 1, 81st Legislature, Regular Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.253 requires the Board to set fee amounts that are reasonable and necessary to cover the costs of administering the Act. Section 1301.403 sets forth the requirements for renewal of a license. The General Appropriations Act, Article VIII and Article IX (Senate Bill 1, 81st Legislature, Regular Session), provides additional funding to the Board contingent upon the Board assessing fees sufficient to generate \$1,085,520 in additional revenue, during the 2010 - 2011 biennium. The amendments to §361.6 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, HB 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

No other statute, article or code is affected by this proposed amendment.

§361.6. *Fees.*

- (a) The Board has established the following fees:

- (1) Initial Licenses, Endorsements and Registrations
 - (A) Master Plumber license--\$230 [\$198];
 - (B) Journeyman Plumber license--\$40 [\$27];
 - (C) Medical gas installation endorsement (Master)--\$55;
 - (D) Medical gas installation endorsement (Journeyman)--\$14;
 - (E) Plumbing inspector license--\$55;
 - (F) Water supply protection specialist endorsement (Journeyman)--\$14;
 - (G) Water supply protection specialist endorsement (Master)--\$55;
 - (H) Tradesman Plumber-Limited License--\$36 [\$27];
 - (I) Plumber's Apprentice Registration/Application--\$18 [\$12];
 - (J) Residential Utilities Installer Registration/Application--\$18 [\$12];
 - (K) Drain Cleaner Registration/Application--\$18 [\$12];
 - (L) Drain Cleaner-Restricted Registration/Application--\$18 [\$12].
- (2) Examinations
 - (A) Master Plumber examination--\$175 [\$155];
 - (B) Journeyman Plumber examination--\$40 [\$27];
 - (C) Medical gas installation endorsement (Master)--\$80;
 - (D) Medical gas installation endorsement (Journeyman)--\$27;
 - (E) Plumbing inspector examination--\$55;
 - (F) Water supply protection specialist endorsement (Journeyman)--\$27;
 - (G) Water supply protection specialist endorsement (Master)--\$80;
 - (H) Tradesman Plumber-Limited License--\$36 [\$27].
- (3) Renewals
 - (A) Master Plumber license--\$230 [\$198];
 - (B) Journeyman Plumber license--\$40 [\$27];
 - (C) Medical gas installation endorsement (Master)--\$55;
 - (D) Medical gas installation endorsement (Journeyman)--\$14;
 - (E) Plumbing inspector license--\$55;
 - (F) Water supply protection specialist endorsement (Journeyman)--\$14;
 - (G) Water supply protection specialist endorsement (Master)--\$55;
 - (H) Plumbing Inspector with a Master and/or Journeyman License--\$55;
- (I) Master Plumber with Journeyman Plumber License--\$230 [\$198];
- (J) Tradesman Plumber-Limited License--\$36 [\$27];
- (K) Plumber's Apprentice Registration--\$18 [\$12];
- (L) Residential Utilities Installer Registration--\$18 [\$12];
- (M) Drain Cleaner Registration--\$18 [\$12];
- (N) Drain Cleaner-Restricted Registration--\$18 [\$12].
- (4) Other fees
 - (A) Late renewal
 - (i) Master Plumber:
 - (I) less than 90 days--one-half renewal fee--\$115 [\$99];
 - (II) more than 90 days--renewal fee--\$230 [\$198];
 - (ii) Medical gas installation endorsement (Master):
 - (I) less than 90 days--one half renewal fee--\$27.50;
 - (II) more than 90 days--renewal fee--\$55;
 - (iii) Medical gas installation endorsement (Journeyman):
 - (I) less than 90 days--one half renewal fee--\$7;
 - (II) more than 90 days--renewal fee--\$14;
 - (iv) Journeyman Plumber:
 - (I) less than 90 days--one-half renewal fee--\$20 [\$13.50];
 - (II) more than 90 days--renewal fee--\$40 [\$27];
 - (v) Water supply protection specialist (Journeyman):
 - (I) less than 90 days--one half renewal fee--\$7;
 - (II) more than 90 days--renewal fee--\$14;
 - (vi) Water supply protection specialist (Master):
 - (I) less than 90 days--one half renewal fee--\$27.50;
 - (II) more than 90 days--renewal fee--\$55;
 - (vii) Plumbing Inspector:
 - (I) less than 90 days--one half renewal fee--\$27.50;
 - (II) more than 90 days--renewal fee--\$55;
 - (viii) Master Plumber with Journeyman Plumber:
 - (I) less than 90 days--one half renewal fee--\$115 [\$99];
 - (II) more than 90 days--renewal fee--\$230 [\$198];
 - (ix) Plumbing Inspector with Master and/or Journeyman Plumber:
 - (I) less than 90 days--one half renewal fee--\$27.50;

- (II) more than 90 days--renewal fee--\$55;
- (x) Tradesman Plumber-Limited License:
 - (I) less than 90 days--one half renewal fee--\$18 [§13.50];
 - (II) more than 90 days--renewal fee--\$36 [§27];
- (xi) Plumber's Apprentice Registration:
 - (I) less than 90 days--one half renewal fee--\$9 [§6];
 - (II) more than 90 days--renewal fee--\$18 [§12];
- (xii) Residential Utilities Installer Registration:
 - (I) less than 90 days--one half renewal fee--\$9 [§6];
 - (II) more than 90 days--renewal fee--\$18 [§12];
- (xiii) Drain Cleaner Registration:
 - (I) less than 90 days--one half renewal fee--\$9 [§6];
 - (II) more than 90 days--renewal fee--\$18 [§12];
- (xiv) Drain Cleaner-Restricted Registration:
 - (I) less than 90 days--one half renewal fee--\$9 [§6];
 - (II) more than 90 days--renewal fee--\$18 [§12].
- (B) Instructor Certification Training (Per Day)--\$100.
- (C) Duplicate license or registration--\$10.
- (D) Returned check--\$25.
- (b) Methods of payment
 - (1) Fees paid electronically through the Texas Online website, which may be accessed from the Texas State Board of Plumbing Examiners' website, may be made in the form of credit card or check.
 - (2) Fees paid by mail or in person may be made in the form of money order, cashier's check, personal check, business check, or the exact amount of cash (cash payments by mail are not recommended).
 - (3) An individual shall pay the appropriate fee prior to the time of examination. For License, Registration, Endorsement, and renewal, the appropriate fee shall be paid prior to issuance of the License, Registration, Endorsement, or renewal.
 - (4) The board, under any special circumstances it finds appropriate, may:
 - (A) waive any requirements concerning the method or timing of payment of any fee;
 - (B) refund any fee; or
 - (C) waive payment of any fee not required by statute.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 14, 2009.
TRD-200902871

Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: August 30, 2009
For further information, please call: (512) 936-5224

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §§97.131 - 97.134

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§97.131 - 97.134, concerning the reporting of sexually transmitted diseases (STD), including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV).

BACKGROUND AND PURPOSE

The amendments are proposed to update and clarify the disease reporting rules for STD, including HIV and AIDS and to make the STD reporting process more efficient and effective in Texas in accordance with Health and Safety Code, Chapter 81, amended by the 80th Legislature, 2007. The proposed amendments would require the reporting of additional types of STD laboratory tests: negative confirmatory tests for syphilis; non-detectable HIV viral loads; negative HIV Polymerase Chain Reaction (PCR) tests for infants up to three years of age; and HIV genotype resistance tests. The proposed amendments would also change the level of the reporting of CD4-T-Lymphocyte (CD4) counts from the current level of <200 cells/microliter or less than 14% to all CD4 counts, regardless of level for adults and adolescents over the age of 12. The proposed amendments would also change the timeframes for reporting certain STD diagnoses and tests. The proposed amendments would have great public health benefit by improving the completeness and timeliness of STD reporting, resulting in increased number of cases of STD being identified and earlier public health interventions to control the spread of STD in Texas. The proposed amendments will also allow for better monitoring of the care and treatment given for HIV infection.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act), according to the schedule in the statute. Sections 97.131 - 97.134 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Revisions are proposed to clarify the rules, improve readability and better reflect the rules' statutory authority.

SECTION-BY-SECTION SUMMARY

Section 97.131.

Proposed amendments to §97.131(1) would add the acronym for the Centers for Disease Control and Prevention (CDC), update the agency and branch name, and update the mailing address for requesting publications from the department.

Existing §97.131(2) is proposed to be deleted, and existing §97.131(3) renumbered paragraph (7) with changes, because the STD defined here would instead be defined by inserting a cross-reference to the federal CDC definitions of those diseases. The acronym for Sexually Transmitted Diseases is also proposed to be added.

New definitions are proposed in §97.131 as these new terms are used in subsequent sections of rule text. The proposed new definitions are as follows:

(2) Confirmatory Test--A second analytical test that is done to detect disease, when an initial or screening test yields a preliminary positive result, which is independent of the initial test and uses a different technique and chemical principle in order to ensure reliability and accuracy.

(3) FASTA File--An electronic data format used to store nucleotide sequences of the Human Immunodeficiency Virus (HIV).

(4) HIV-Exposed Infant--Any infant born to an HIV-infected woman.

(5) Point of Care Tests--Diagnostic tests performed at or near the site of patient care that increase the likelihood of the patient receiving the results as well as referrals for treatment and support services in a timely manner. These tests are usually performed in emergency rooms, outpatient clinics and physician offices.

(6) Screening Test--An analytical test used to preliminarily detect the presence of disease. Positive screening test results should be followed by a confirmatory test to verify the presence of that disease.

Section 97.132.

Proposed changes to the introductory paragraph for §97.132 would clarify language by using the standard term "report." The amendments would also add "HIV-exposed infants" to the list of what triggers reporting because infants born to HIV-infected mothers are suspected to have HIV infection and must be reported according to Health and Safety Code, §81.042(b), which requires reporting of a patient that has or is suspected of having a reportable disease. Proposed amendments would also provide a cross-reference to §97.133 (relating to Reporting Information for Sexually Transmitted Diseases) regarding what must be reported, and would improve readability by using the term STD instead of listing each reportable disease separately (this tracks changes proposed for the definitions section of the rules).

Proposed amendments to §97.132(1) would better reflect the requirements of Health and Safety Code, §81.042 regarding reporting triggers as well as where the ultimate legal responsibility for reporting lies, and would improve readability by using the acronym STD.

Proposed amendments to §97.132(2) would better reflect the requirements of Health and Safety Code, §81.042, particularly subsection (e). Proposed amendments would also change the word "patient" to "person" because some of the persons reported will not be patients of the reporting person.

Proposed amendments to §97.132(3) would add language to include hospital laboratories as an entity required to report cases of STD, to track corresponding language in Health and Safety Code, §81.042(d), and would add the acronym for sexually transmitted diseases instead of listing each reportable STD separately. Proposed amendments would delete language about the type of tests and test results required to be reported because that information is provided in more detail in §97.133 and a cross-reference to §97.133 is already provided in this section.

Proposed amendments to §97.132(4) would replace the terminology "counseling and testing site or a community-based organization" with the term "testing program," to make the language consistent with Health and Safety Code, §85.002, and would add a reference to that section in the rule text. Proposed amendments also clarify the reason for the medical director or other physician to report cases of STD and would use the acronym STD instead of listing each reportable STD separately. Language regarding delegation of reporting duties would be deleted so that the rule does not improperly imply that the statutorily-designated persons can legally avoid their reporting responsibilities under the statute.

Proposed amendments to §97.132(5) would add language requiring local school authorities to report a child attending school who is suspected of having an STD, based on medical evidence. The amendments would also add a cross-reference to Health and Safety Code, §81.003, where the term "school authority" is defined. The proposed changes to this section (along with the existing rule text in the department's rule, §97.7) are necessary to be consistent with the requirements of Health and Safety Code, §81.042(c).

Section 97.133.

The introductory paragraph for §97.133 is proposed to be amended to remove an inappropriate qualifier statement, to add language that clarifies the reporting "trigger" to reflect Health and Safety Code, Chapter 81, and to use the acronym STD for sexually transmitted disease instead of listing each reportable STD separately and to delete language about the type of tests and test results required to be reported because this information is provided in §97.133(2) and (3).

Proposed amendments to §97.133(1) would improve readability and clarity by replacing language about how to report with a cross-reference to §97.133(2) which contains the most recent information on that subject.

The text in existing §97.133(2) is proposed to be moved to §97.133(1) as part of the reorganization of this section to improve flow and readability.

Existing subparagraphs in §97.133(1)(A) - (G) are proposed to be deleted because the STD listed and the most current forms used to report them will be in proposed new language in §97.133(2).

New language proposed for §97.133(2) would clearly state that the referenced persons have to report as described in the subsequent list in subparagraphs (A) - (E). The proposed amendments change the reporting forms for adult and adolescent HIV/AIDS and pediatric HIV/AIDS from CDC forms to department-specific forms (the department's Texas HIV/AIDS Adult/Adolescent case report form and the department's Texas HIV/AIDS pediatric case report form), and add the entire name of the department's forms in addition to the number of the form for the reporting forms that are not being changed. The proposed new language separates

reporting requirements for physicians and other persons specified in amended §97.132(1), (2), (4), and (5) and laboratories as specified in §97.133(3) into two different subsections to improve clarity in the differences in reporting requirements for physicians and laboratories. The proposed amendments to §97.133(2) will also clarify that results from point of care tests must be reported.

Existing language at §97.133(3) is proposed to be replaced with language requiring persons in charge of a laboratory or any other facility described in §97.132(3) to report results, as described, for each person who has or is suspected of having an STD and/or is an HIV-exposed infant. The existing language in this section is proposed to be deleted as unnecessary, since §97.134 specifies how reporting should be done. The proposed new language in §97.133(3) lists the specific types of tests and test results required to be reported. The proposed new §97.133(3) would add language that clarifies that positive or reactive STD test results, including screening tests, are required to be reported. The proposed amendment changes the current requirement that only detectable HIV viral loads are reported, making both detectable and non-detectable HIV viral loads required to be reported. The proposed new §97.133(3) changes the reporting of CD4+T-lymphocytes (CD4s) from counts below 200 cells/microliter or less than 14% to all CD4 counts, regardless of level for adults and adolescents over 12 years of age. The proposed new §97.133(3) revises the requirement to report PCR tests for HIV (DNA or RNA) on all infants to include both positive and negative results for infants from birth to three years of age, instead of the existing requirement to report only positive PCR results. Adding a requirement to report negative PCR results for infants will enable the State to determine perinatal HIV transmission rates for Texas with more accuracy and will also decrease the amount of time public health workers spend on contacting health care providers to obtain negative PCR results on HIV-exposed infants. Overall, these changes to reporting requirements for HIV test results by laboratories and other listed entities will greatly enhance completeness of reporting for HIV and increase the number of new HIV cases reported, resulting in better data to target prevention interventions and allocate scarce resources. These changes will also result in better monitoring of severity of HIV disease and the quality of HIV care in Texas. These changes will allow a more accurate determination of the unmet needs for HIV care in Texas. The proposed new §97.133(3) changes the required reporting of confirmatory tests for syphilis from the existing requirement to only report positive (reactive) results to the requirement to report both reactive and non-reactive tests. This will allow public health personnel to spend less time investigating positive screening tests with missing confirmatory test results and decrease calls to physicians and laboratories to provide this information. The proposed new §97.133(3) also adds the requirement to report nucleotide sequences of HIV from resistance testing, e.g. FASTA files, so that the State can obtain more complete information for its HIV resistance surveillance activities, including monitoring the level and types of HIV medication resistance in Texas.

Section 97.134.

Proposed amendments to §97.134(a) would add clarifying language that specifies that case reports are confidential as provided by law, and would remove vague language.

Proposed amendments to §97.134(b) would delete the word "region" and replace it with "departmental regional office which covers the area" for clarity on who should receive case reports in the absence of a local health department director.

Proposed amendments to §97.134(c) would update the agency, branch name and the mailing address for sending reports of STD. A reference to the HIV/STD program website for obtaining additional reporting information is proposed to be added, and the statement about obtaining postage paid envelopes from the HIV/STD program is proposed to be deleted because there have been no requests for such envelopes for the past five years and the department is discontinuing that service.

Proposed amendments to §97.134(d) would specify data elements required to be reported for cases of STD and HIV infection or AIDS, to be consistent with amendments made to Health and Safety Code, §81.043 and §81.044 during the 80th Legislature, 2007. Text is proposed to be added that updates the reference to the department's health service regions, and text is proposed to be deleted that states forms can be obtained from the department's HIV/STD program and the related address since this entity does not provide reporting forms. Proposed amendments add a reference to the HIV/STD program website for a list of local health departments and the department's health service region offices where reporting forms can be obtained.

Proposed amendments to §97.134(e) would require a shorter reporting period for physicians and other referenced persons to submit reports of primary or secondary syphilis by telephone (i.e., within one working day of determining the diagnosis). Other STD retain the existing requirement that reporting be made within seven calendar days. The proposed amendment for reporting syphilis test results within one working day will allow public health authorities to respond more quickly to reported cases and interrupt the chain of transmission earlier, thereby reducing the spread of the disease. Primary and secondary (P&S) syphilis are the stages of syphilis where the disease is most transmissible. In Texas, cases of P&S syphilis have steadily increased from 398 in 2000 to 1,172 in 2007 indicating a need for more aggressive intervention measures for syphilis, including earlier disease reporting. The proposed amendment for reporting primary and secondary syphilis would also put Texas in compliance with the CDC syphilis surveillance recommendations. Currently, Texas is one of only seven states that have a syphilis reporting timeframe of seven calendar days; 29 states have syphilis reporting within one working day.

Proposed amendments to §97.134(f) would require any person in charge of a clinical laboratory or other entity as specified by §97.132(3) to submit syphilis test results within three working days of obtaining the test result, which is a change from the existing rule that requires weekly submission. Other STD retain the existing requirement that test results be reported within seven calendar days in §97.134(f). Syphilis is proposed to be treated separately for the same reasons previously stated in this preamble regarding proposed changes to §97.134(e). Laboratory reporting of syphilis tests is proposed to be within three working days of obtaining the test result compared to within one working day for physicians and other non-laboratory reporters. This timeframe is proposed based on feedback from stakeholders that were concerned that "within one day" reporting from laboratories could result in a laboratory triggering a disease intervention specialist (DIS) contacting a patient before the physician received the laboratory report. Feedback from laboratory stakeholders was that a "within one day" reporting time frame would be overly burdensome. A "within three-day" timeframe for reporting syphilis is recommended because it shortens the reporting timeframe but also allows a short time-lag for physicians to receive results before a DIS contacts the patient. Laboratory stakeholders also indicated that this timeframe would be not be

as overly burdensome as a "within one-day" timeframe. Proposed amendments to §97.134(f) would add clarifying language that the requirement for laboratories to report quarterly if they have no positive test results for that calendar quarter is an additional requirement and does not replace other reporting requirements.

Existing language at §97.134(g) is proposed to be deleted in its entirety because a rule on the subject is not needed. New language is proposed for subsection (g), which would require health authorities to report each week to the department, using electronic or paper reports, all STD cases, including HIV infection and AIDS, to be consistent with amendments made to Health and Safety Code, §81.043, during the 80th Legislature, 2007. The proposed new language will also include the address for mailing paper reports and an email address to request information on how to file electronic reports.

FISCAL NOTE - STATE GOVERNMENT

Casey S. Blass, Director, Infectious Disease Prevention Section, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state government. The proposed rule amendments will result in an increase in the volume and type of STD reports received by the department; however, other provisions in the proposed amendments would offset those resource demands by decreasing the amount of time which needs to be spent on case follow-up by department STD surveillance personnel. No new personnel are anticipated to be needed under the proposed rules.

FISCAL NOTE - LOCAL GOVERNMENT

Mr. Blass has also determined that for each of the first five years the sections are in effect, there will be no fiscal implications to local government. The proposed rule amendments will result in an increase in the volume and type of STD reports received by local health departments and may increase the number of new cases needing disease intervention services; however, other provisions in the proposed amendments should offset those resource demands by decreasing the amount of time needed for follow-up on preliminary positive STD results with a missing confirmatory test and follow-up on HIV-exposed infants without test results indicating final HIV status.

MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Once a person/entity is within the scope of these rule amendments, then the proposed rules would provide for certain things that must be done such that the impacts are definite (e.g., small business must devote resources necessary to file reports). Since these impacts will happen, the department analysis under Economic Impact Statement as follows will also serve to satisfy the Small Business Impact Analysis required by Government Code, §2006.002(a).

The Economic Impact Statement does not explicitly cover "micro-businesses," but Government Code, §2006.002(a), requires an analysis of the impacts on such businesses. The department could not discern any difference in the impact of these rules on small businesses versus micro-business as defined in the statute, so the analysis will consider them both together and refer to them collectively only as "small businesses."

There is no anticipated negative impact on local employment.

The definition of a "small business" for purposes of this requirement was codified at Government Code, §2006.001(2). Under

this definition, a "small business" is an entity that is: for profit, independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities or otherwise subject to control by other entities (and are not publicly traded).

Mr. Blass has determined that there may be an adverse economic effect on those small businesses directly regulated by the proposed rules. Therefore, the following two analyses have been performed:

--ECONOMIC IMPACT STATEMENT

The areas of possible impacts to small businesses regarding the proposed rules involve reporting and the frequency of reporting. Possible impacts are discussed on a section-by-section basis, below.

The proposed amendments to §97.132 do not add persons to the list of those who must report beyond those mandated by existing statutory language (see discussion in the Section-By-Section Summary of this preamble). Because statutory provisions already require these persons to report as indicated, there is no new legal burden created by more clearly expressing at fact in §97.132.

The proposed amendments to §97.133 requiring the use of Texas specific forms to report adult/adolescent and pediatric HIV/AIDS cases will have no adverse effect on small businesses in Texas. The HIV/AIDS case report forms are primarily used by the HIV/AIDS reporting sites, which are all local or regional health departments, the Texas Department of Criminal Justice, or by a limited number of larger volume HIV testing sites and hospitals, all of which would be categorized as either nonprofit organizations or large businesses. The Texas-specific case report forms should be available free of charge from local and regional health departments.

The proposed amendments to §97.133 requiring laboratories that conduct HIV drug resistance testing to submit reports containing the nucleotide sequence (e.g., FASTA file) to the department will have no adverse effect on small business in Texas. HIV drug resistance testing is a highly specialized laboratory procedure that appears to be limited to a handful of large reference labs across the country. In a telephone survey of select laboratories doing business in Texas completed in March of 2009, only eight labs were identified that do this type of testing, none of which would be classified as a small business.

The proposed amendments to §97.133 requiring laboratories to report all PCR test results for children less than three years of age will have no adverse effect on small businesses in Texas. As with HIV drug resistance testing, HIV PCR testing appears to be a specialized test only performed in very large reference laboratories. In March of 2009, an informal survey of HIV/AIDS reporting sites was conducted to determine which labs reported positive PCR results, and only four very large laboratories were named. This was further confirmed through laboratory report information contained in STD*Management Information System (STD*MIS), the state STD data reporting system in Texas. None of the 107 positive PCR tests that were reported in 2007 through STD*MIS were from laboratories that would be classified as a small business.

The proposed amendments to §97.133 requiring the reporting of all levels of CD4 counts and percentages for adults and adolescents, and all detectable and non-detectable HIV viral load tests,

will not have an effect on small businesses in Texas. STD*MIS laboratory report data was used to determine how many labs conduct CD4 and HIV viral load tests. In the first six months of 2008, 63 laboratories were listed as having performed either CD4 or viral load tests, and none of these would be classified as a small business.

The proposed amendments to §97.133 requiring laboratories to report all confirmatory syphilis test results will have an overall negligible effect on small business in Texas. To estimate the number of laboratories performing syphilis tests that might be affected, all syphilis lab reports from the first six months of 2008 were pulled from STD*MIS. In that period, 265 facilities were listed as the laboratory that performed any type of syphilis test with any result. After removing laboratories from the list that would be classified as government or nonprofit, and researching the size of the remaining businesses, only 24 organizations were left that might qualify as small business. Even if that number were doubled to account for small private facilities that may not have had a syphilis test reported in STD*MIS in the six-month period, this rule change should affect no more than 50 small businesses. If one assumes that the difference between the number of positive screening tests reported in STD*MIS from these 24 small labs and the number of positive confirmatory tests reported were all negative confirmatory tests, which are not currently reportable, the total additional volume to be reported per year is estimated to be 60 to 120 negative confirmatory test results. Since this total number of tests is spread across 50 estimated small laboratories, an average small lab will only be reporting two or three negative syphilis confirmatory results per year. Any extra costs associated with printing and mailing in these extra syphilis test results is mitigated by the fact that under the current reporting rule, local STD reporting sites are calling labs to follow up on positive screening tests that were received without an accompanying confirmatory test result. For small laboratories, having employees field calls from the health department and look up negative confirmatory results is presumed to be equally if not more costly to the business than just routinely submitting the negative confirmatory test result along with the positive screening test.

The proposed amendments to §97.134 revising the timeframe for laboratories to report syphilis test results within three working days of obtaining a result will have a nominal effect on small business in Texas. As described previously, the number of small business laboratories conducting syphilis tests in Texas is estimated at no more than 50. Requiring small labs to report syphilis results in three days as opposed to the current weekly rule will not have an effect on the number of tests reported, only the frequency with which these results are submitted to the health department. According to 2008 STD*MIS data, the average small laboratory reports eight syphilis lab tests per year, so even if each one of those tests required an individual transmittal to the health department, the cost would be quite low per year, per lab. One small business laboratory in Texas was consulted and they estimated that it takes a lab technician no more than ten minutes to print and mail out a test result. Lab technicians earn approximately \$20 per hour. Reporting a single test result might cost a lab a maximum of \$5, including man-hours, paper, envelope and postage. The total extra cost per year for the average small lab should be no more than \$40.

The proposed amendments to §97.134 revising the timeframe and method for healthcare providers to report P&S syphilis diagnoses would have a negligible effect on small business in Texas. According to STD*MIS data, approximately 300 different healthcare providers diagnosed P&S syphilis cases in the

first six months of 2008. Of that total, about half would clearly be classified as government, nonprofit, or large business providers. Factoring in some extra providers for a full year timeframe, the department estimates that 200 small business providers may be impacted by this rule change. The total number of P&S syphilis cases to be reported among these 200 healthcare providers is estimated at 400 cases per year, for an average of two cases per provider per year. While changing the timing of the case report from within seven days to within one working day for a provider may be slightly less convenient, the overall time and effort required to make the report will not change for these small businesses. In fact, with this proposed rule amendment also requiring diagnosing facilities to report P&S syphilis cases by telephone, these small businesses may incur less expense compared to the resources required to report cases on paper. Under this rule amendment, the average small business healthcare provider should be able to complete all of their P&S case reports for a year with two five-minute phone calls.

The proposed amendments to §97.134 deleting the portion stating that in addition to report forms, postage paid envelopes may be obtained from the HIV/STD Epidemiology Division without charge will not have an adverse effect on small business. The department has not provided any postage paid envelopes to any individual or organization wishing to report HIV/STD in the past five years or more. Making this change in the reporting rules will have no adverse effect on small business in Texas because no business is currently taking advantage of this offer and has not for many years.

--REGULATORY FLEXIBILITY ANALYSIS

The department considered several alternative methods to achieve the purpose of the rule change proposed for §97.134(e) - (f). Initially, the proposal was to make all syphilis test results reportable by laboratories within one day rather than three days. However, the early feedback received from meetings with key HIV/STD laboratory stakeholders in early 2009, was that one-day reporting would be excessively burdensome to lab workflow. Another concern expressed by stakeholders was that within one-day reporting from laboratories could result in a laboratory report triggering a DIS contacting a patient before the physician received the laboratory report. The three working-day time period for laboratory reporting for syphilis is being proposed as a compromise. Another alternative considered was to proscribe electronic lab reporting. The department may provide limited technical assistance to any laboratory that may be interested in moving towards the reporting of lab test results through secure electronic file transfers. After the initial set up, electronic reporting would reduce costs by eliminating the paper and postage from the equation and reducing the time spent by staff to complete the reporting process. However, it was determined that the department does not have the statutory authority to mandate electronic reporting from laboratories, and there are also technical issues regarding compatibility of different electronic data systems. Finally, the department also considered implementing a different timetable for syphilis reporting among small laboratories (as opposed to those that are not small businesses); however, this was not deemed to be adequately protective of public health and safety. P&S syphilis is increasing in Texas with case numbers tripling over the last eight years. Moving to within three-day reporting of syphilis for all laboratories will shorten the timeframe from its current reporting requirement, which will in turn allow earlier public health intervention but not be overly burdensome to laboratories.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC BENEFIT

In addition, Mr. Blass has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public will benefit from adoption of the proposed amendments because more complete and timely STD reporting will result in enhanced STD data, increased identification of new cases of STD and earlier public health interventions to control the spread of STD in Texas. The enhanced data will allow public health officials to better target prevention and treatment programs for individuals at risk for HIV and other STD and will enable public health officials to identify disease outbreaks in specific geographical areas or in specific populations more quickly.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nicole Hawkins, Department of State Health Services, HIV/AIDS Epidemiology and Surveillance Branch, MC 1873, P.O. Box 149347, Austin, TX 78714-9347, or by email to Nicole.Hawkins@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' legal authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by the Health and Safety Code, Subtitle D, Chapter 81, Subchapter C, §§81.041 - 81.044, which grants the Texas Board of Health authority to identify each communicable disease or health condition that shall be reported under Chapter 81, authority to maintain and revise as necessary the list of reportable diseases, and authority to require reporting of HIV and AIDS. The proposed amendments are also authorized by the other statutory citations listed in the individual sections herein. The amendments are also authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

§97.131. *Definitions.*

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) AIDS and HIV Infection--Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection are as defined by the Centers for Disease Control and Prevention (CDC) and in accordance with the Health and Safety Code, §81.101. The publication designating the most current definition may be requested from: Texas Department of State Health Services, TB/HIV/STD [HIV/STD] Epidemiology and Surveillance Branch [Division], P.O. Box 149347, [1100 West 49th Street,] Austin, Texas 78714-9347 [78756-3199].

(2) Confirmatory Test--A second analytical test that is done to detect disease, when an initial or screening test yields a preliminary positive result, which is independent of the initial test and uses a different technique and chemical principle in order to ensure reliability and accuracy.

~~[(2) Chancroid, *Chlamydia trachomatis* infection, gonorrhea and syphilis--These diseases are as defined by the Centers for Disease Control and Prevention. The publication designating the most current definition may be requested from: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756-3199.]~~

(3) FASTA File--An electronic data format used to store nucleotide sequences of the Human Immunodeficiency Virus (HIV).

(4) HIV-Exposed Infant--Any infant born to an HIV-infected woman.

(5) Point of Care Tests--Diagnostic tests performed at or near the site of patient care that increase the likelihood of the patient receiving the results as well as referrals for treatment and support services in a timely manner. These tests are usually performed in emergency rooms, outpatient clinics and physician offices.

(6) Screening Test--An analytical test used to preliminarily detect the presence of disease. Positive screening test results should be followed by a confirmatory test to verify the presence of that disease.

(7) ~~[(3)] Sexually transmitted disease (STD)--An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, and that produces or might produce a disease in, or otherwise impair, the health of either person, or might cause an infection or disease in a fetus in utero or a newborn. Acquired Immune Deficiency Syndrome (AIDS), chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases reportable under these rules, and each are as defined by CDC (see http://www.cdc.gov/ncphi/diss/nndss/casedef/case_definitions.htm).~~

§97.132. *Who Shall Report Sexually Transmitted Diseases.*

The following shall report ~~[provide information on]~~ cases of STD and HIV-exposed infants, as detailed in §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases) ~~[AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis]:~~

(1) A physician or dentist shall report each patient who has or is suspected of having an STD and/or is an HIV-exposed infant [that is diagnosed or treated for AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, or syphilis]. A physician or dentist may designate an employee of the clinic, including a school based

clinic or physician's/dentist's office, to serve as the reporting officer. However, it is ultimately the responsibility of the [A] physician or dentist to ensure [who can assure] that [a designated or appointed person in] the required reporting [clinic or office] is submitted [regularly reporting every occurrence of these diseases does not have to submit a duplicate report].

(2) The following persons [chief administrative officer of a hospital, medical facility, or penal institution] shall report each person [patient] who has or is suspected of having an STD and/or is an HIV-exposed infant, if a report is not made as required by persons specified in paragraphs (1), and (3) - (5) of this section: [is medically attended at the facility and is diagnosed with AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, or syphilis. The chief administrative officer may designate an employee of the institution to serve as the reporting officer. A chief administrative officer who can assure that a designated or appointed person in the institution is regularly reporting every occurrence of these diseases does not have to submit a duplicate report. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.]

(A) a professional registered nurse;

(B) an administrator or director of a public or private temporary or permanent child-care facility (as defined in Title 40, Texas Administrative Code, Part 19, Chapter 746, Subchapter A, §746.105);

(C) an administrator or director of a nursing facility (as defined in Title 40, Texas Administrative Code, Part 1, Chapter 18, Subchapter A, §18.2);

(D) an administrator or director of a personal care facility (as defined in Title 40, Texas Administrative Code, Part 19, Chapter 705, Subchapter A, §705.1001);

(E) an administrator or director of an adult day-care facility (as defined in Title 40, Texas Administrative Code, Part 1, Chapter 98, Subchapter A, §98.2(3));

(F) an administrator or director of a maternity home (as defined in Texas Health and Safety Code, §249.001(3));

(G) an administrator or director of an adult respite care center (as defined in Texas Health and Safety Code, §242.181(3));

(H) an administrator of a home health agency (as defined in Texas Insurance Code, §1351.001(2));

(I) an administrator or health official of a public or private institution of higher education;

(J) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;

(K) a superintendent, manager, or health official of a public or private camp, home, or institution;

(L) a parent, guardian, or householder;

(M) a health professional;

(N) an administrator or health official of a penal or correctional institution; or

(O) emergency medical service personnel, a peace officer, or a firefighter.

(3) Any person in charge of a clinical laboratory, hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a blood specimen, or any specimen derived from a human body, [that] yields microscopic, cultural, serological or any other evidence of an STD [AIDS, chancroid, Chlamydia trachomatis

infection, gonorrhea, HIV infection, or syphilis, including a CD4+ T lymphocyte cell count below 200 cells/microliter or a CD4+ T lymphocyte percentage of less than 14%;] shall report according to §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases).

(4) The medical director or other physician responsible for the medical oversight of a testing program, as defined in Texas Health and Safety Code, §85.002, [counseling and testing site or a community-based organization] shall report each patient who has or is suspected of having an STD and/or is an HIV-exposed infant. [that is diagnosed with AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, or syphilis. The medical director or clinic physician may designate an employee of the counseling and testing site or community-based organization to serve as the reporting officer. A medical director or clinic physician who can assure that the designated reporting officer is regularly reporting every occurrence of these diseases; in accordance with §97.133 of this title, does not have to submit a duplicate report.]

(5) A local school authority, as defined at Texas Health and Safety Code, §81.003, shall report a child attending school who is suspected, based on medical evidence, of having an STD and/or is an HIV-infected infant. [School administrators, as defined in §97.1 of this title (relating to Definitions), who are not medical directors meeting the criteria described in this section, are exempt from reporting AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection or syphilis.]

(6) (No change.)

§97.133. *Reporting Information for Sexually Transmitted Diseases.*

Reporting entities described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases) shall report all information required by the department for each person who has or is suspected of having an STD and/or is an HIV-exposed infant and[, to the extent that the information is collected by the reporting entity,] for any specimen derived from a human body that yields microscopic, cultural, serological or any other evidence of STD [AIDS, chancroid, *chlamydia trachomatis* infection, gonorrhea, HIV infection or syphilis, including a CD4+ T lymphocyte cell count below 200 cells/microliter or a CD4+ T lymphocyte percentage of less than 14%].

(1) The department has established the reporting procedures required under Texas Health and Safety Code, §81.044, including the designation of specific forms and methods of reporting [which may be in writing, by telephone, by electronic data transmission, or by other means]. Completed written reports, electronic reports, and telephone reports shall be made in accordance with §97.134 of this title (relating to How to Report Sexually Transmitted Diseases).

[(A) Reports of AIDS, HIV infection, CD4+ T Lymphocyte cell count below 200 cells/microliter, or CD4+ T lymphocyte percentage of less than 14% shall be made using all of the information collected by the reporting entity found in the most current version of forms CDC 50.42B, CDC 50.42C, or STD-28.]

[(B) Reports of chancroid shall be made using all of the information collected by the reporting entity found in the most current version of form STD-27 or STD-28.]

[(C) Reports of *chlamydia trachomatis* infection shall be made using all of the information collected by the reporting entity found in the most current version of form STD-27 or STD-28.]

[(D) Reports of gonorrhea shall be made using all of the information collected by the reporting entity found in the most current version of form STD-27 or STD-28.]

{(E) Reports of syphilis shall be made using all of the information collected by the reporting entity found in the most current version of form STD-27 or STD-28.}

{(F) Reports pertaining to congenital syphilis shall be made using all of the elements found in the most current version of the form adopted by the Bureau of HIV and STD Prevention.}

{(G) Reports pertaining to enhanced perinatal HIV surveillance shall be made using all of the elements found in the most current version of the form adopted by the Bureau of HIV and STD Prevention.}

(2) Physicians and other persons as specified by §97.132(1), (2), (4), and (5) of this title are required to report.

(A) All diagnoses of adult or adolescent HIV infection and AIDS using all of the information found in the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in §97.134 of this title (relating to How to Report Sexually Transmitted Diseases) and all diagnoses of pediatric HIV infection and AIDS using all of the information from the most current version of the department's Texas HIV/AIDS pediatric case report form (available as specified in §97.134 of this title).

(B) Information on all HIV positive women giving birth and HIV exposed infants using all of the elements from the most current version of the department's Enhanced Perinatal HIV Surveillance form adopted by the department (available as specified in §97.134 of this title).

(C) All chancroid, Chlamydia trachomatis, gonorrhea, and syphilis infections using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) for adults and adolescents (available as specified in §97.134 of this title).

(D) All congenital syphilis infections using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27).

(E) Positive or reactive results from point of care testing for STDs (including HIV) for adults, adolescents and HIV exposed infants using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27).

{(2) Completed written reports, electronic reports, and telephone reports shall be made in accordance with §97.134 of this title (relating to How to Report Sexually Transmitted Diseases).}

(3) Any person in charge of a laboratory or other facility as specified by §97.132(3) of this title is required to report the results for each person who has or is suspected of having an STD and/or is an HIV-exposed infant by providing all of the information sought in the most current version of the department's Notification of Laboratory Test Findings Indicating Presence of Chlamydia trachomatis, Gonorrhea, Syphilis, Chancroid, HIV Infections or CD4 Counts form (STD-28) (available as specified in §97.134 of this title), including the following.

(A) All positive or reactive STD test results, including screening tests, all HIV viral loads (detectable and non-detectable), and all CD4+T-lymphocyte cell counts and percentages for adults and adolescents over 12 years of age.

(B) Polymerase Chain Reaction tests (PCR) for HIV (DNA or RNA) on all infants from birth to three years of age, regardless of the test findings (e.g., negative or positive).

(C) All confirmatory tests for syphilis, regardless of result (e.g., reactive or non-reactive).

(D) HIV drug resistance testing that contains the resulting nucleotide sequences of the HIV (e.g., FASTA file).

{(3) Electronic reports shall be made in accordance with §97.134(i) of this title.}

§97.134. How to Report Sexually Transmitted Diseases.

(a) All case reports received by the health authority or the department are confidential as provided by law [records and not public records].

(b) Reporting forms and/or information from all entities required to report should be sent to the local health department director where the physician's office, hospital, laboratory or medical facility is located or, if there is no such facility, the reports should be forwarded to the regional director in the department's health service region office which covers the area [region] where the physician's office, hospital, laboratory, or medical facility is located.

(c) If any individual or entity is unsure where to report any of the diseases mentioned in this subchapter [title], the reports shall be placed in a sealed envelope addressed as follows: Texas Department of State Health Services, TB/HIV/STD [HIV/STD] Epidemiology and Surveillance Branch [Division], MC 1873, P.O. Box 149347, [1100 West 49th Street,] Austin, Texas 78714-9347 [78756-3199] and the envelope shall be marked "Confidential." The envelope shall be delivered with the seal unbroken to the TB/HIV/STD [HIV/STD] Epidemiology and Surveillance Branch [Division] office for opening and processing of the contents. Additional reporting information can be obtained from the HIV/STD Program website at <http://www.dshs.state.tx.us/hivstd/default.shtm>. [Postage paid envelopes may be obtained by contacting the HIV/STD Epidemiology Division and are provided without charge.]

(d) Reports of STD and/or HIV-exposed infants shall contain all of the information found on the reporting forms specified in §97.133(2) of this title (relating to Reporting Information for Sexually Transmitted Diseases) including, but not limited to (reporting [Reporting] forms can be obtained from local health departments and department health service regions; [regional offices, and the Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756-3199.] forms [Forms] shall be provided without charge to individuals required to report; [a list of local health departments and the department's health service region offices that can provide reporting forms is available at <http://www.dshs.state.tx.us/hivstd/healthcare/reporting/shtm>].

(1) the patient's name, address, age, sex, race, and occupation; the date of onset of the disease or condition; the probable source of infection and the name of the attending physician or dentist; and

(2) reports of HIV infection or AIDS shall also contain the patient's ethnicity, national origin, and city and county of residence.

(e) Physicians and other persons as specified by §97.132(1), (2), (4), and (5) of this title must submit reports of primary or secondary syphilis by telephone within one working day of determining the diagnosis. All other reports [Reports] of STD [confirmed or suspected sexually transmitted diseases] including AIDS and HIV from physicians and other persons as specified by §97.132 of this title [infection] must be submitted within seven calendar days of the determination of the existence of a reportable condition.

(f) Any person in charge of a clinical laboratory or other entity as specified by §97.132(3) of this title shall submit syphilis test results within three working days of obtaining the test result and shall submit

all other test results within seven calendar days. In addition to required reporting, if ~~[Laboratories shall submit information weekly. If]~~, during any calendar quarter, tests for chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection and syphilis are performed and all test results are negative, the person in charge of reporting for the laboratory shall submit a statement to this effect on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

(g) A health authority shall report each week to the department all cases reported to the authority during the previous week of STD, including HIV infection and AIDS, using electronic or paper reports. Information on how to submit electronic reports can be obtained from the TB/HIV/STD Epidemiology and Surveillance Branch through an email request to HIVSTDreporting@dshs.state.tx.us. Paper reports should be mailed to the Texas Department of State Health Services, TB/HIV/STD Epidemiology and Surveillance Branch, MC 1873, P.O. Box 149347, Austin, TX, 78714-9347.

~~[(g) A local health director or regional director may authorize one or more employees under his/her supervision to receive the report from the physician by telephone and to physically complete the form; use of this alternative, if authorized, is at the option of the reporting physician. The local health department director or regional director shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.]~~

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the amendments of §289.201, concerning general provisions for radioactive material, §289.203, concerning radiation notices, instructions, reports to workers, and inspection protocol, §289.251, concerning exemptions, general licenses, and general license acknowledgements, and §289.252, concerning licensing of radioactive material.

BACKGROUND AND PURPOSE

The amendments to §§289.201, 289.251, and 289.252 are necessary primarily to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC). The amendments are the result of the NRC's adoption of requirements for the revision of skin dose limits and requirements for the expanded definition of byproduct material. Other amendments are made to §§289.201, 289.251, and 289.252 to clarify program policies and procedures. The amendments to §289.203 are necessary to incorporate requirements for notice of violation documents that are related to increased control violations and to update the Notice to Employees Form.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.201, 289.203, 289.251, and 289.252 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 289.201(b) adds a definition for "consortium" as an association of medical use licensees and a Position Emission Tomography (PET) radionuclide production facility, since the term is used in §289.252(kk) regarding new requirements for the issuance of specific licenses for a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium. The definition of "shallow dose equivalent" is revised. These definitions are items of compatibility with the NRC and as an agreement state, Texas must adopt them. In addition, the definition of "residential location" is added to define a term that is used in §289.252(x) regarding specific terms and conditions of licenses.

The reference to the Texas Radiation Control Act is revised to state the complete legal citation in §289.203(a).

The title for the referenced §289.202 rule section is corrected in §289.203(b)(1)(A).

Section 289.203(b)(1)(D) restructures the sentence and adds the words "not been labeled "withhold from public disclosure under Government Code, §552.101," or equivalent phrase, in accordance with §289.252(ii) of this title," to clarify that notices of violation involving radiological working conditions or orders issued relating to increased security controls that have been labeled to withhold from public disclosure, shall not be posted.

The words "shall be posted by each licensee or registrant as required by this section" are deleted at the end of the sentence and subsequently the words, "Each licensee or registrant shall post" are added to the beginning of the first sentence in §289.203(b)(3) to be consistent with sentence structure used in this subsection. The term "Bureau of Radiation Control (BRC)" is deleted and replaced with "RC" to be consistent with the nomenclature for the applicable referenced form.

New language is added to §289.203(d)(2) in order to maintain compatibility with the NRC and to be consistent with language used in the related "Notice to Employees" form.

Section §289.203(i) adds "RC Form 203-1" after "The following form," to be consistent with language used throughout the chapter. In addition, to be consistent with language used throughout the chapter, the Notice to Employees form, referenced as a figure in this subsection, is revised with the following changes: form number now reads "RC Form 203-1;" corrects the department name and address, as applicable, throughout the form; replaces "radiation" with "registration" in item 2 of "YOUR EMPLOYER'S RESPONSIBILITY;" replaces "personnel monitoring" with "individual monitoring devices" in item 3 of "WHAT IS COVERED BY THESE RULES;" corrects the title of §289.202 in item 1 of "REPORTS ON YOUR RADIATION EXPOSURE HISTORY" and in item 2 replaces "personnel monitoring" with "individual monitoring devices" and deletes "is required by" and replaces it with "are provided in accordance with."

Throughout §289.251, references are revised to reflect the renumbering of subsequent subsections due to the deletion of §289.251(k) regarding renewal of general license acknowledge-

ments. Change is reflected in new renumbered §289.251(k) concerning amendment of general license acknowledgements and §289.251(l) concerning appendices. Other typographical and minor grammatical corrections are made throughout the section.

New §289.251(e)(1)(C) adds language to clarify that manufacturers, processors, and producers must have an NRC license to introduce exempt concentrations of radioactive material into a product or material and then distribute it. This is an item of compatibility with the NRC.

Section 289.251(e)(2)(A) adds subparagraphs (D) and (F) to the list of references to state all applicable references for the exemption which is an item of compatibility with the NRC.

In §289.251(e)(2)(B), the words, " or owns" are added after "transfers" to maintain rules that are compatible with NRC.

New §289.251(e)(2)(F) adds the prohibition against combining exempt concentrations of radioactive material to increase the radiation level, except as specified. This is an item of compatibility with the NRC.

In §289.251(e)(3)(A)(i)(I)(-h-), the standard international units are added to be consistent with the format used for units of measure used throughout the chapter and the language is changed to clarify that the exemption applies to intact timepieces. This requirement is an item of compatibility with the NRC.

New §289.251(e)(3)(A)(i)(X) is added to include certain smoke detectors as specified. Smoke detectors were previously exempted under paragraph (3)(C) of this subsection. Modern smoke detector design is very consistent and doses have been evaluated. Based on this, a product-specific exemption is being added. This is also an item of compatibility with the NRC.

New §289.251(e)(3)(C)(i)(III) is added to clarify that the exemption includes gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by the department with comparable provisions to Title 10, Code of Federal Regulations (CFR), §32.26 to maintain rules that are compatible with NRC and as an agreement state.

Current §289.251(e)(3)(D) is deleted to remove resins containing scandium-46 and designed for sand consolidation in oil wells from the listing of exempt items. The exemption is deleted because it is obsolete. No products are being distributed for use under the exemption. This is also an item of compatibility with the NRC.

Section 289.251(f)(4)(H)(iv)(IX) adds language to allow transfer or disposal of the device containing radioactive material by export in accordance with Title 10, CFR, Part 110. This is also an item of compatibility with NRC.

Concerning §289.251(f)(4)(H)(iv)(XI), language is added to clarify the ability of a specific licensee to transfer radioactive material for possession and use under its own specific license, under certain conditions, without prior approval. This is an item of compatibility with the NRC.

New §289.251(f)(4)(H)(iv)(XIX) adds a requirement to assure that the general license acknowledgement holder comply with information contained in the device safety evaluation.

New §289.251(f)(4)(K) adds requirements for a general license for certain items and self-luminous products containing radium-226 such as antiques, intact and non-intact timepieces, and

luminous items installed in air, marine or land vehicles. These requirements are compatibility items with NRC.

Concerning §289.251(g)(1), 3.7 megabecquerels of radium-226 is added to the list of radioactive material that, if possessed, requires filing an application for acknowledgement. This requirement is a compatibility item with NRC.

Section 289.251(g)(1)(B) adds ", and serial number of the source" after "label" to require that the serial number also be provided to the department.

Clarifying language is added to §289.251(g)(3) to specify that the General License Acknowledgement Form shall be completed in accordance with the instructions contained in the form and that the completed form shall be submitted to the department within 30 days of receipt.

In §289.251(i)(2), language is added to clarify that radioactive material shall not be used or stored in residential locations and that each person holding a GLA issued by the department shall obtain prior approval from the agency before storing or using radioactive material in an area not previously authorized in the GLA.

Concerning §289.251(j), the subsection is revised to delete the requirements for expiration and renewal of GLAs and only address requirements for the termination of GLAs. The department has determined that GLAs will no longer have an expiration date assigned to them and will not require renewal since GLAs are primarily a tracking system.

Current §289.251(k) deletes the requirements for renewal of GLAs as a result of the department's determination that GLAs will no longer have an expiration date and therefore there is no longer a need for GLA renewals. Subsequent subsections are renumbered as reflected in new §289.251(k) and (l).

New §289.251(l)(1) and (l)(2), revises the table of exempt concentrations to state the correct abbreviation of Tantalum (73), Ytterbium (70), and Yttrium (39) and to be compatible with the NRC.

Throughout §289.252, references to §289.254 relating to licensing of radioactive waste processing and storage facilities and §289.260 relating to licensing of uranium recovery and byproduct material disposal facilities are deleted. These rules have been repealed as a result of Senate Bill 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the Texas Commission on Environmental Quality (TCEQ). Other typographical, minor grammatical, and rule reference citation corrections are made throughout the section.

Concerning §289.252(d), "abandoned" is added after "denied" to clarify that the agency has the option to abandon the specific license application in addition to denying or issuing the license.

New §289.252(d)(11) is added to specify that action on a specific license application will be considered abandoned if the applicant does not respond within 30 days from the date of a request for any information by the agency. In addition, the new paragraph clarifies that abandonment of such actions does not provide an opportunity for a hearing but that the applicant retains the right to resubmit the application in accordance with paragraphs (1) through (7) of this subsection.

Concerning §289.252(e)(9) the department added "and/or used" after "stored" and deleted the word "storage" before "facility" to clarify that the requirement applies to facilities used for storage and/or use of radioactive material.

New §289.252(e)(11) adds a requirement that the applicant be listed on the Secretary of State's website as authorized to conduct business in the state in order for the department to verify this information prior to issuing a license.

New §289.252(f)(3)(O) and (g)(11) respectively, add that a specific duty of the radiation safety officer and the Radiation Safety Committee is to have knowledge of and ensure compliance with federal and state security measures for radioactive material to enhance awareness.

New §289.252(i)(5) adds the prohibition of the introduction of exempt concentrations by all persons except for those authorized by a license issued by NRC. This is an item of compatibility with the NRC.

New §289.252(n)(2) adds a requirement for a dry wipe test on each source containing more than 0.1 microcurie of americium-241 or radium-226 before transferring the source to a general licensee. This is an item of compatibility with the NRC.

Section 289.252(o) adds a reference for calibration, transmission, or reference sources used in medical settings. This requirement is an item of compatibility with the NRC.

Concerning §289.252(p), the standard international units of measure are added to be compatible with the NRC.

Section 289.252(r)(1)(A)(i) is revised to clarify that the applicant provide evidence of being registered with the United States Food and Drug Administration as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug in accordance with Title 21, CFR, §207.20(a). This requirement is an item of compatibility with the NRC.

New §289.252(r)(1)(A)(iv) adds as an option for the information required for a license, that the applicant provide evidence of operating as a nuclear pharmacy within a federal medical institution. This requirement is an item of compatibility with the NRC.

New §289.252(r)(1)(A)(v) adds as an option for the information required for a license, that the applicant provide evidence that a PET drug production facility be registered with a state agency. This requirement is an item of compatibility with the NRC.

New §289.252(r)(3)(A) - (D) is added to recognize nuclear pharmacists, who prepared only accelerator-produced radioactive drugs, before the effective date of the rule, to work as authorized nuclear pharmacists at a commercial nuclear pharmacy. This requirement is an item of compatibility with the NRC.

Concerning §289.252(x)(3), language is added to clarify that radioactive material shall not be used or stored in residential locations unless specifically authorized by the agency.

New §289.252(x)(9) is added to require licensees to measure strontium-82 and strontium-85 contamination before use of the first eluate when eluting strontium-82/rubidium-82 generators. This requirement is an item of compatibility with the NRC.

Section 289.252(y)(1) deletes the last sentence of the current paragraph because this statement is addressed in §289.252(y)(2).

New §289.252(ee)(1)(F) is added to specify the documents that out-of-state licensees shall have in their possession at all times when conducting work in Texas and make available for agency review upon request.

Concerning the table for §289.252(jj)(2), Calcium-45 is removed from the list of radionuclides for the 0.1 microcurie limit used for determining financial assurance for decommissioning to maintain compatibility with the NRC.

Concerning footnote 2 to the table for §289.252(jj)(9)(D), the words "with this Order" are deleted after "compliance" as they are not applicable to this statement.

New §289.252(kk) established requirements for issuing specific licenses for a medical facility or educational institution to produce PET drugs for noncommercial transfer within its consortium. Language is added to clarify that nothing in the authorization in accordance with this subsection relieves the licensee from complying with FDA, other federal, or state requirements for radioactive drugs, and includes requirements associated with the labeling and production of PET radioactive drugs by licensees authorized in accordance with this subsection to produce PET radioactive drugs for the noncommercial transfer to medical use licensees in their consortium. This new subsection also requires licensees to use the notification process in §289.252(r) of this title when permitting qualified authorized nuclear pharmacists to work as authorized nuclear pharmacists. These changes are made to maintain rules compatible with the NRC.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that these sections are in effect, there will be no fiscal implications to the state or local government as a result of enforcing and administering the sections as proposed.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with §§289.201, 289.203, 289.251, and 289.252 as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed because the amendments are clarifying in nature and do not impose additional actions on the part of those required to comply. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering these sections is ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that rules are clear and specific.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, MC 1987, P.O. Box 149347, Austin, TX 78714-9347, (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or Cindy.Cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER D. GENERAL

25 TAC §289.201, §289.203

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.201. *General Provisions for Radioactive Material.*

(a) (No change.)

(b) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Consortium--An association of medical use licensees and a Position Emission Tomography (PET) facility in the same geographical area that jointly own or share in the operation and maintenance costs of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium shall be located at an educational institution or a medical facility.

(23) [(22)] Constraint (dose constraint)--A value above which specified licensee actions are required.

(24) [(23)] Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(25) [(24)] Curie (Ci)--A unit of measurement of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (mCi) and the microcurie (µCi). One mCi = 1×10^{-3} Ci = 3.7×10^7 dps. One µCi = 1×10^{-6} Ci = 3.7×10^4 dps. One nanocurie (nCi) = 1×10^{-9} Ci = 3.7×10^1 dps. One picocurie (pCi) = 1×10^{-12} Ci = 3.7×10^{-2} dps.

(26) [(25)] Decommission--To remove a facility or site safely from service and reduce residual radioactivity to a level that permits the following:

(A) release of the property for unrestricted use and/or termination of license; or

(B) release of the property under alternate requirements for license termination.

(27) [(26)] Deep dose equivalent (H_d), that applies to external whole body exposure--The dose equivalent at a tissue depth of 1 centimeter (cm) (1,000 milligrams per square centimeter (mg/cm²)).

(28) [(27)] Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(29) [(28)] Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(30) [(29)] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site, or, in the case of structures or equipment, in similar materials using adequate measurement technology, survey, and statistical techniques.

(31) [(30)] Distribution--The physical conveyance and authorized transfer of commodities from producers to consumers and any intermediate persons involved in that conveyance.

(32) [(31)] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(33) [(32)] Dose equivalent (H_e)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(34) [(33)] Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(35) [(34)] Effective dose equivalent (H_e)--The sum of the products of the dose equivalent to each organ or tissue (H_t) and the weighting factor (w_t) applicable to each of the body organs or tissues that are irradiated ($H_e = \sum w_t H_t$).

(36) [(35)] Embryo/fetus--The developing human organism from conception until the time of birth.

(37) [(36)] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed sources of radiation. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(38) [(37)] Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(39) [(38)] Exposure rate--The exposure per unit of time.

(40) [(39)] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(41) [(40)] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(42) [(41)] Generally applicable environmental radiation standards--Standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(43) [(42)] Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(44) [(43)] High radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(45) [(44)] Human use--The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(46) [(45)] Individual--Any human being.

(47) [(46)] Individual monitoring--The assessment of:

(A) dose equivalent to an individual by the use of individual monitoring devices; or

(B) committed effective dose equivalent to an individual by bioassay or by determination of the time-weighted air concen-

trations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.202(c) of this title); or

(C) dose equivalent to an individual by the use of survey data.

(48) [(47)] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters (TLDs), optically stimulated luminescence dosimeters (OSLs), pocket ionization chambers (pocket dosimeters), electronic personal dosimeters, and personal air sampling devices.

(49) [(48)] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(50) [(49)] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(51) [(50)] Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(52) [(51)] Land disposal facility--The land, buildings, and equipment that are intended to be used for the disposal of low-level radioactive waste (LLRW) into the subsurface of the land.

(53) [(52)] Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm²).

(54) [(53)] License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(55) [(54)] Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(56) [(55)] Licensee--Any person who is licensed by the agency in accordance with the Act and this chapter.

(57) [(56)] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc. For the purposes of evaluation and/or distribution of sealed sources, this includes Licensing State Status: Product Review Only.

(58) [(57)] Lost or missing radioactive material--Radioactive material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(59) [(58)] Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted under the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined by Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined by Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(60) [(59)] Manufacture--To fabricate or mechanically produce.

(61) [(60)] Member of the public--Any individual, except when that individual is receiving an occupational dose.

(62) [(61)] Minor--An individual less than 18 years of age.

(63) [(62)] Monitoring--The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(64) [(63)] NARM--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(65) [(64)] Natural radioactivity--Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(66) [(65)] NRC--The United States Nuclear Regulatory Commission or its duly authorized representatives.

(67) [(66)] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, from voluntary participation in medical research programs, or as a member of the public.

(68) [(67)] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation at energies usually in excess of 1 MeV.

(69) [(68)] Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than NRC, and other than federal government agencies licensed or exempted by NRC.

(70) [(69)] Personnel monitoring equipment (See definition for individual monitoring devices.)

(71) [(70)] Pharmacist--An individual licensed by the Texas State Board of Pharmacy to compound and dispense drugs, prescriptions, and poisons.

(72) [(71)] Physician--An individual licensed by the Texas Medical Board.

(73) [(72)] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(74) [(73)] Public dose--The dose received by a member of the public from exposure to sources of radiation released by a licensee, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, or from voluntary participation in medical research programs.

(75) [(74)] Quality factor (Q)--The modifying factor listed in subsection (n)(1) and (2) of this section that is used to derive dose equivalent from absorbed dose.

(76) [(75)] Quarter (calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(77) [(76)] Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 gray).

(78) [(77)] Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(79) [(78)] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 cm from the source of radiation or from any surface that the radiation penetrates.

(80) [(79)] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(81) [(80)] Radiation safety officer (RSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who

must be specifically authorized on a radioactive material license, and who is the primary contact with the agency. Specific training and responsibilities for an RSO are listed in §289.252 of this title (relating to Licensing of Radioactive Material), §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), and §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(82) [(81)] Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(83) [(82)] Radioactive waste--As used in §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), this term is equivalent to LLRW.

(84) [(83)] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(85) [(84)] Radiobioassay (See definition for bioassay.)

(86) [(85)] Registrant--Any person issued a certificate of registration by the agency in accordance with the Act and this chapter.

(87) [(86)] Regulation (See definition for rule.)

(88) [(87)] Regulations of the United States Department of Transportation (DOT)--The requirements in Title 49, CFR, Parts 100 - 189.

(89) [(88)] Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(90) [(89)] Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(91) Residential location--Any area where a structure or structures are located in which people lodge or live, and the grounds on which these structures are located including, but not limited to, houses, apartments, condominiums, and garages.

(92) [(90)] Residual radioactivity--The radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Title 30, Texas Administrative Code, §336.334.

(93) [(91)] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(94) [(92)] Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} C/kg of air. (See definition for exposure.)

(95) [(93)] Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended)--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(96) [(94)] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(97) [(95)] Shallow dose equivalent (H_s) (that applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 cm (7 mg/cm²) [averaged over an area of 1 square centimeter (cm²)].

(98) [(96)] SI--The abbreviation for the International System of Units.

(99) [(97)] Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(100) [(98)] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(101) [(99)] Source material--Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(102) [(100)] Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(103) [(101)] Special form radioactive material--Radioactive material that satisfies the following conditions.

(A) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(B) The piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch); and

(C) It satisfies the requirements specified by NRC. A special form encapsulation designed in accordance with NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with NRC requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.

(104) [(102)] Special nuclear material--Special nuclear material is defined as:

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that NRC, in accordance with the provisions of the Atomic Energy Act of 1954,

§51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(105) [(103)] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained uranium-235; uranium-233 in quantities not exceeding 200 g; plutonium in quantities not exceeding 200 g; or any combination of them in accordance with the following formula.

(A) For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity).

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:

Figure: 25 TAC §289.201(b)(105)(B)
[Figure: 25 TAC §289.201(b)(103)(B)]

(106) [(104)] Special units--The conventional units historically used by licensees, for example, curie (activity), rad (absorbed dose), and rem (dose equivalent).

(107) [(105)] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of materials and equipment, measurements of levels of radiation or concentration of radioactive material present, and evaluation of administrative and/or engineered controls.

(108) [(106)] Termination--A release by the agency of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(109) [(107)] Test--A method of determining the characteristics or condition of sources of radiation or components thereof.

(110) [(108)] Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25 Texas Administrative Code (TAC), Chapter 289.

(111) [(109)] Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(112) [(110)] Total organ dose equivalent (TODE)--The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) of this title.

(113) [(111)] Transport index--The dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(A) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 feet); or

(B) For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 feet) from the external surface of the package by 100 (equivalent

to the maximum radiation level in mrem/hr at 1 m (3.3 feet), or, for criticality control purposes, the number obtained as described in 10 CFR 71.59, whichever is larger.

(114) [(112)] Type A quantity--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in §289.257(ff) of this title (relating to Packaging and Transportation of Radioactive Material) or may be determined by procedures described in §289.257(ff) of this title.

(115) [(113)] Type B quantity--A quantity of radioactive material greater than a type A quantity.

(116) [(114)] Unrefined and unprocessed ore--Ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(117) [(115)] Unrestricted area (uncontrolled area)--An area, or access to, which is neither limited nor controlled by the licensee. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(118) [(116)] Very high radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at 1 meter (m) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, Sv and rem.

(119) [(117)] Veterinarian--An individual licensed by the Texas State Board of Veterinary Medical Examiners.

(120) [(118)] Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (15)(B) - (E) of this subsection.

(121) [(119)] Week--Seven consecutive days starting on Sunday.

(122) [(120)] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(123) [(121)] Worker--An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(124) [(122)] Working level (WL)--Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are--for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(125) [(123)] Working level month (WLM)--An exposure to one working level for 170 hours--2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(126) [(124)] Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee may change the starting date of the year used to deter-

mine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) - (o) (No change.)

§289.203. Notices, Instructions, and Reports to Workers; Inspections.

(a) Scope and purpose. This section establishes requirements for notices, instructions, and reports by licensees or registrants to individuals engaged in activities under a license or certificate of registration, and options available to such individuals in connection with agency inspections of licensees or registrants to ascertain compliance with the provisions of the Texas Radiation Control Act (Act), Health and Safety Code, Chapter 401, and rules, orders, licenses, and certificates of registration issued thereunder regarding radiological working conditions. The requirements in this section apply to all persons who receive, possess, use, or transfer sources of radiation licensed by or registered with the agency in accordance with this chapter.

(b) Posting of notices to workers.

(1) Each licensee or registrant shall post current copies of the following documents:

(A) the requirements in this section and in §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive ~~Materials~~ Material) or §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation), as applicable;

(B) - (C) (No change.)

(D) any notice of violation involving radiological working conditions~~[-]~~ or order that has:

(i) been issued in accordance with §289.201 of this title (relating to General Provisions for Radioactive Material), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.231 of this title; and ~~[-]~~

(ii) not been labeled "withhold from public disclosure under Government Code, §552.101," or equivalent phrase, in accordance with §289.252(ii) of this title (relating to Licensing of Radioactive Material).

(2) (No change.)

(3) Each licensee or registrant shall post RC ~~[Bureau of Radiation Control (BRC)]~~ Form 203-1, "Notice to Employees," as contained in subsection (i) of this section, or an equivalent document containing at least the same wording as RC ~~[BRC]~~ Form 203-1 ~~[-]~~ shall be posted by each licensee or registrant as required by this section.

(4) (No change.)

(c) (No change.)

(d) Notifications and reports to individuals.

(1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be made available ~~[reported annually]~~ to the individual as specified in this section. The information reported shall include data and results obtained in accordance with agency requirements, orders, license or certificate of registration conditions, as shown in records maintained by the licensee or registrant in accordance with §289.202 or §289.231 of this title, as applicable. Each notification and report shall:

(A) - (D) (No change.)

(2) Each licensee or registrant shall provide an annual written report to advise each worker ~~[annually]~~ of the worker's dose as shown in records maintained by the licensee or registrant in accordance with §289.202(rr) or §289.231(dd) of this title, as applicable, if the individual requests his or her annual dose report in writing.

(3) - (5) (No change.)

(e) - (h) (No change.)

(i) Notice to employees. The following form, RC Form 203-1, or an equivalent as stated in subsection (b)(3) of this section, shall be posted.

Figure: 25 TAC §289.203(i)
~~[Figure: 25 TAC §289.203(i)]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.251, §289.252

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.251. Exemptions, General Licenses, and General License Acknowledgements.

(a) - (d) (No change.)

(e) Exemptions for radioactive material other than source material.

(1) Exempt concentrations.

(A) Except as provided in subparagraph (B) of this paragraph, any person is exempt from this section and §289.252 of this title if that person receives, possesses, uses, transfers, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in subsection (1)(1) ~~[(m)(4)]~~ of this section.

(B) (No change.)

(C) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license, as specified in §289.252 of this title, if the manufacturer, processor, or producer

transfers radioactive material contained in a product or material that does not exceed the concentrations specified in subsection (1)(1) of this section, and that has been introduced into the product or material by a licensee holding a specific license issued by the NRC that expressly authorizes such introduction. The exemption specified in this subparagraph does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) Exempt quantities.

(A) Except as provided in subparagraphs (C), (D), and (F) [subparagraph (C)] of this paragraph, any person is exempt from these rules if that person receives, possesses, uses, transfers, or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in subsection (1)(2) [(m)(2)] of this section.

(B) Any person who possesses radioactive material received or acquired, prior to September 25, 1971, in accordance with the general license provided in subsection (f)(4)(A) of this section is exempt from the requirements for a license set forth in §289.252 of this title if that person possesses, uses, [or] transfers, or owns such radioactive material.

(C) (No change.)

(D) No person may, for purposes of commercial distribution, transfer radioactive material in quantities greater than the individual quantities set forth in subsection (1)(2) [(m)(2)] of this section, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt in accordance with this paragraph or equivalent regulations of the NRC, any agreement state, or any licensing state, except in accordance with a specific license issued by the NRC in accordance with Title 10, CFR, §32.18 or by the agency in accordance with §289.252(j) of this title, which states that the radioactive material may be transferred by the licensee to persons exempt in accordance with this paragraph or the equivalent regulations of the NRC, any agreement state, or any licensing state.

(E) The schedule of quantities set forth in subsection (1)(2) [(m)(2)] of this section applies only to radioactive materials distributed as exempt quantities in accordance with a specific license issued by the agency, another licensing state, or the commission. Subsection (1)(2) [(m)(2)] of this section does not apply to radioactive materials that have decayed from quantities not originally exempt and does not make such material, or the sources or devices in which the material is contained except from the licensing requirements in this section or §289.252 of this title.

(F) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in subsection (1)(2) of this section, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the requirements in this title.

(3) Exempt items.

(A) Certain items containing radioactive material.

(i) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from this chapter if that person receives, possesses, uses, transfers, or acquires the following products:

(I) timepieces, hands, or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(-a-) - (-g-) (No change.)

(-h-) 1 µCi (0.037 megabecquerel (MBq)) of radium-226 per timepiece in intact timepieces manufactured prior to January 1, 1986 [1 µCi of radium-226 per timepiece in timepieces, hands, or dials manufactured or initially distributed prior to January 1, 1986];

(II) - (VII) (No change.)

(VIII) ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, a source of radioactive material not exceeding the applicable quantity set forth in subsection (1)(2) [(m)(2)] of this section or 0.05 µCi of americium-241; [or]

(IX) spark gap irradiators containing not more than 1 µCi of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least 3 gallons per hour; or [-]

(X) ionization chamber smoke detectors containing not more than 1 microcurie (µCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(ii) (No change.)

(B) (No change.)

(C) Gas and aerosol detectors containing radioactive material.

(i) Except for persons who manufacture, process, [or] produce, or initially transfer gas and aerosol detectors containing radioactive material, any person is exempt from this chapter if that person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that:

(I) detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the NRC in accordance with Title 10, CFR, §32.26, or an agreement state or a licensing state in accordance with §289.252(k) of this title; [and]

(II) the specific license issued in accordance with §289.252 of this title authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements; and [-]

(III) this exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued in accordance with §289.252 of this title or under comparable provisions to Title 10, CFR, §32.26, authorizing distribution to persons exempt from regulatory requirements.

(ii) - (iii) (No change.)

[(D)] Resins containing scandium-46 and designed for sand consolidation in oil wells. Any person is exempt from this chapter if that person receives, possesses, uses, transfers, or acquires synthetic plastic resins containing scandium-46, which are designed for sand consolidation in oil wells. Such resins shall have been manufactured or imported in accordance with a specific license issued by the NRC, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the agency or any agreement state to the manufacturer of such resins in accordance with licensing requirements equivalent to those in Title 10, CFR, §§32.16 and 32.17. This exemption does not authorize the manufacture of any resins containing scandium-46.]

(4) (No change.)

(f) General licenses. In addition to the requirements of this section, all general licenses, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202(ww) and (xx) of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(1) - (3) (No change.)

(4) General licenses for radioactive material other than source material.

(A) - (G) (No change.)

(H) General license for certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

(i) - (iii) (No change.)

(iv) Any person who receives, acquires, possesses, uses, or transfers radioactive material in a device in accordance with the general license in this subparagraph shall do the following:

(I) - (VI) (No change.)

(VII) immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism, or indicator, or upon the detection of 185 becquerels (0.005 µCi) or more of removable radioactive material. The device shall not be operated until it has been repaired by the manufacturer or other person holding a specific license from the agency, the NRC, an agreement state, or a licensing state to repair such devices. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device. A report, prepared in accordance with §289.202(xx) and (yy) of this title, containing a brief description of the event and the remedial action taken and in the case of detection of 185 becquerels (0.005 µCi) or more removable radioactive material or failure of, or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use shall be furnished to the agency within 30 days. Under these circumstances, the requirements in §289.202(ddd) of this title may be applicable, as determined by the agency on a case-by-case basis;

(VIII) (No change.)

(IX) transfer or dispose of the device containing radioactive material only by export in accordance with Title 10, CFR, Part 110, by transfer to another general licensee as authorized in subclauses (XII) and (XVI) of this clause or to a person authorized to receive the device by a specific license issued by the agency in accordance with §289.252(l) of this title, or an equivalent specific license issued by the NRC, an agreement state, or a licensing state, or as otherwise approved under subclause (XI) of this clause;

(X) (No change.)

(XI) obtain written agency approval before transferring the device to any other specific licensee not specifically identified in subclause (IX) of this clause; however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder:

(-a-) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(-b-) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by clause (iv)(l) of this subparagraph) so that the device is labeled in compliance with §289.202(cc) of this title; however the manufacturer, model number, and serial number must be retained;

(-c-) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(-d-) reports the transfer under subclause (X) of this clause.

(XII) - (XIII) (No change.)

(XIV) report changes to the mailing address for the location of use (including change in name of general licensee) to the agency within 30 days of the effective date of the change. If it is a portable device, a report of address change is only required for a change in the device's primary place of storage; ~~and~~

(XV) not hold devices that are not in use for longer than two years. If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required by clause (iv) of this subparagraph need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby. The licensee shall make and maintain, for intervals of five years, records of the quarterly physical inventories for inspection by the agency; [-]

(XVI) not export the device containing radioactive material except in accordance with Title 10, CFR, Part 110; [-]

(XVII) comply with the provisions of §289.202(ww) and (xx) of this title for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of §289.202 and §289.203 of this title; [-]

(XVIII) respond to written requests from the agency to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the agency a written justification for the request; and [-]

(XIX) assure that the device is used in accordance with information contained in the device safety evaluation.

(I) - (J) (No change.)

(K) General license for certain items and self-luminous products containing radium-226.

(i) A general license is hereby issued to any person to acquire, receive, possess, use, or transfer radium-226 contained in the following products.

(l) Antiquities originally intended for use by the general public. For purposes of this subclause, antiquities are products distributed for use by the general public in the late 19th and early 20th centuries; such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(II) Intact timepieces containing greater than 1 µCi (0.037 MBq), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(III) Luminous items installed in air, marine, or land vehicles.

(IV) All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

(V) Small radium sources containing no more than 1 µCi (0.037 MBq) of radium 226.

(ii) Any person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with this subparagraph shall do the following.

(I) Provide to the agency within 30 days of any indication of possible damage to the product that could result in a loss of the radioactive material. The report should include a brief description of the event, and the remedial action taken.

(II) Not abandon products containing radium-226.

(-a-) The product, and any radioactive material from the product, may only be disposed of according to §289.202 of this title or as otherwise approved by the agency.

(-b-) The product, and any radioactive material from the product, may be transferred to a person authorized by a specific license to receive the radium-226 or as otherwise approved by the agency.

(III) The general license in this subparagraph does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired provided that paint containing radium-226 is not applied or removed.

(g) General license acknowledgements for radioactive material other than source material. In addition to the requirements of this section, all general license acknowledgement holders, unless otherwise specified, are subject to the requirements of §§289.201, 289.202(w) and (xx), 289.204, 289.205, and 289.257 of this title.

(1) Persons possessing a general license for devices in accordance with subsection (f)(4)(H) of this section and being in the possession of radioactive material in devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 3.7 MBq (0.1 mCi) of radium-226, 37 MBq (1 mCi) of americium-241, or any transuranic (for example, element with atomic number greater than uranium (92)), based on the activity indicated on the label on the device, shall file an application for acknowledgement within 30 days of receipt, acquisition, or possession of such a device. The application shall be on a form prescribed by the agency to include the following information and any other information specifically requested by the agency:

(A) (No change.)

(B) information about each device to include the manufacturer (or initial transferor), model number, and serial number of the device, and the radioisotope and activity (as indicated on the label), and serial number of the source;

(C) - (G) (No change.)

(2) (No change.)

(3) Persons possessing ~~in possession of~~ a device meeting the criteria of paragraph (1) of this subsection shall respond annually

to the General License Acknowledgement Self Evaluation Form provided by the agency. The form shall be completed in accordance with the instructions contained in the form. The completed form shall be submitted to the agency within 30 days of receipt. [Response should be in accordance with the instructions on the form.]

(h) Issuance of general license acknowledgements.

(1) - (2) (No change.)

(3) The agency may request, and the licensee shall provide, additional information after the general license acknowledgement has been issued to enable the agency to determine whether the general license acknowledgement should be modified in accordance with subsection (k) ~~[(4)]~~ of this section.

(i) Specific terms and conditions.

(1) (No change.)

(2) Each person holding a general license acknowledgement issued by the agency in accordance with this section shall confine use and possession of the devices and radioactive material identified in the general license acknowledgement to the locations specified in the general license acknowledgement. Radioactive material shall not be used or stored in residential locations unless authorized by the agency. Each person holding a general license acknowledgement issued by the agency shall obtain prior approval from the agency before storing or using radioactive material in an area not previously authorized in the general license acknowledgement.

(3) - (5) (No change.)

(j) ~~Termination [Expiration and termination] of general license acknowledgements [acknowledgement].~~

~~[(1) Each general license acknowledgement expires at the end of the day, in the month and year stated in the general license acknowledgement.]~~

~~[(2) Expiration of the general license acknowledgement does not relieve the holder of the general license acknowledgement of the requirements of this chapter.]~~

(1) ~~[(3)]~~ Each holder of a general license acknowledgement shall notify the agency immediately, in writing, and request termination of the general license acknowledgement when the holder of the general license acknowledgement decides to terminate all activities involving materials specified in the general license acknowledgement.

~~[(4) No less than 30 days before the expiration date specified in a general license acknowledgement, the holder of the general license acknowledgement shall submit an application for general license acknowledgement renewal in accordance with subsection (k) of this section.]~~

(2) ~~[(5)]~~ Each holder of a general license acknowledgement shall, no less than 30 days before vacating or relinquishing possession of control of premises that have been used as a place of storage or use of radioactive material as a result of general licensed activities, notify the agency in writing of intent to vacate and do the following: ~~[-]~~

(A) terminate use of radioactive material;

(B) dispose of radioactive material in accordance with this section and/or §289.202(ff) of this title; and

(C) pay any outstanding fees in accordance with §289.204 of this title.

~~[(6) If a holder of a general license acknowledgement does not submit an application for renewal in accordance with subsection~~

(k) of this section, such person shall on or before the expiration date specified in the general license acknowledgement:]

[(A) terminate use of radioactive material; and]

[(B) dispose of radioactive material in accordance with this section and/or §289.202(ff).]

[(k) Renewal of general license acknowledgements.]

[(1) Applications for renewal of general license acknowledgements shall be filed in accordance with subsection (g)(1) or (f)(4)(G)(iv) of this section, as applicable.]

[(2) If a holder of a general license acknowledgement has properly filed a renewal application for the same activities at least 30 days before the expiration of the existing general license acknowledgement in accordance with this section, such existing general license acknowledgement shall not expire until the application has been finally determined by the agency.]

(k) [(4)] Amendment of general license acknowledgements.

(1) The holder of the general license acknowledgement required by subsection (g)(1) of this section shall report in writing to the agency any changes in information furnished by the holder of the general license acknowledgement. The report shall be submitted within 30 days after the effective date of such change.

(2) Applications for amendments of a general license acknowledgement shall be filed in accordance with subsection (g)(1)(A) - (F) of this section, as applicable, and shall specify the respects in which the holder of a general license acknowledgement desires a general license acknowledgement to be amended.

(l) [(m)] Appendices.

(1) Exempt concentrations.

Figure: 25 TAC §289.251(l)(1)

[Figure: 25 TAC §289.251(m)(1)]

(2) Exempt quantities.

Figure: 25 TAC §289.251(l)(2)

[Figure: 25 TAC §289.251(m)(2)]

§289.252. *Licensing of Radioactive Material.*

(a) Purpose. The intent of this section is as follows.

(1) (No change.)

(2) Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized by the following:

(A) a specific license issued in accordance with this section and/or any of the following sections:

[(i) §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities);]

[(i) [(ii)] §289.255 of this title (relating to Radiation Safety[;] Requirements and Licensing and Registration Procedures for Industrial Radiography);]

[(ii) [(iii)] §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material);]

[(iii) [(iv)] §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators);]

[(iv) [(v)] §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)); or]

[(v) [(vi)] §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); or]

(B) (No change.)

(3) (No change.)

(b) Scope. In addition to the requirements of this section, the following additional requirements are applicable.

(1) All licensees, unless otherwise specified, are subject to the requirements in the following sections:

(A) (No change.)

(B) §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials [Material]);

(C) - (F) (No change.)

(2) (No change.)

[(3) Licensees engaged in radioactive waste processing and/or storage are subject to the requirements of §289.254 of this title.]

(3) [(4)] Licensees engaged in industrial radiographic operations are subject to the requirements of §289.255 of this title.

(4) [(5)] Licensees using radioactive material for medical or veterinary use are subject to the requirements of §289.256 of this title.

(5) [(6)] Licensees using sealed sources in irradiators are subject to the requirements of §289.258 of this title.

(6) [(7)] Licensees possessing or using naturally occurring radioactive material are subject to the requirements of §289.259 of this title.

[(8) Licensees engaged in uranium recovery and byproduct material disposal are subject to the requirements of §289.260 of this title.]

(c) (No change.)

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied, abandoned or the license should be issued.

(1) - (10) (No change.)

(11) Action on a specific license application will be considered abandoned if the applicant does not respond within 30 days from the date of a request for any information by the agency. Abandonment of such actions does not provide an opportunity for a hearing; however, the applicant retains the right to resubmit the application in accordance with paragraphs (1) - (7) of this subsection.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) - (3) (No change.)

(4) the applicant satisfied [satisfies] any applicable special requirement in this section and other sections as specified in subsection (a)(2)(A) of this section;

(5) - (6) (No change.)

(7) the applicant submitted [submits an] adequate operating, safety, and emergency procedures [manual];

(8) the applicant's permanent facility is located in Texas (if the applicant's permanent facility is not located in Texas, reciprocal recognition shall be sought as required by subsection (ee) of this section); [and]

(9) the owner of the property is aware that radioactive material is stored and/or used on the property, if the proposed ~~[storage]~~ facility is not owned by the applicant. The applicant shall provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use; [-]

(10) there is no reason to deny the license as specified in subsections (d)(10) or (x)(8) ~~[subsection (d)(10) or (x)(7)]~~ of this section; and [-]

(11) the applicant is listed on the Secretary of State's website as authorized to conduct business in the state, unless the applicant is exempt. All applicants using an assumed name in their application shall file an assumed name certificate with the Secretary of State and/or the office of the county clerk as required under the Business and Commerce Code, Chapter 71.

(f) Radiation safety officer.

(1) - (2) (No change.)

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) - (L) (No change.)

(M) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; ~~[and]~~

(N) to serve as the primary contact with the agency; and [-]

(O) to have knowledge of and ensure compliance with federal and state security measures for radioactive material.

(4) - (5) (No change.)

(g) The duties and responsibilities of the Radiation Safety Committee (RSC) include but are not limited to the following:

(1) - (8) (No change.)

(9) evaluating new uses of radioactive material; ~~[and]~~

(10) reviewing and approving permitted program and procedural changes prior to implementation; and [-]

(11) having knowledge of and ensuring compliance with federal and state security measures for radioactive material.

(h) Specific licenses for broad scope authorization for multiple quantities or types of radioactive material for use in research and development.

(1) - (2) (No change.)

(3) Unless specifically authorized, in accordance with a separate license, persons licensed according to paragraph (1) of this subsection shall not:

(A) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (Ci) or more of radioactive material in sealed sources used for irradiation of materials;

(B) conduct activities for which a specific license issued by the agency in accordance with subsections (i) - (u) of this section and §289.255, §289.256, and §289.259 ~~[§§289.254, 289.255, 289.256, and §289.259]~~ of this title is required;

(C) - (D) (No change.)

(i) Specific licenses for introduction of radioactive material into products in exempt concentrations.

(1) - (4) (No change.)

(5) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt in accordance with §289.251 of this title except as specified with a license issued by the NRC.

(j) Specific licenses for commercial distribution of radioactive material in exempt quantities.

(1) Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission (NRC), Washington, DC 20555.

(2) (No change.)

(3) The license issued in accordance with paragraph (2) of this subsection is subject to the following conditions.

(A) - (C) (No change.)

(D) In addition to the labeling information required by subparagraph (C) of this paragraph, the label affixed to the immediate container, or an accompanying brochure, shall:

(i) state that the contents are exempt from the NRC [United States Nuclear Regulatory Commission (NRC)], agreement state, or licensing state requirements;

(ii) - (iii) (No change.)

(4) - (5) (No change.)

(k) - (m) (No change.)

(n) Specific licenses for the manufacture of calibration sources containing americium-241, plutonium, or radium-226 for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(D) of this title.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture calibration sources containing americium-241, plutonium, or radium-226 to persons generally licensed in accordance with §289.251(f)(4)(D) of this title will be issued if the agency approves the information submitted by the applicant. The information shall satisfy the requirements of Title 10, CFR, §§32.57, 32.58, 32.59, and 32.102, and Title 10, CFR, §70.39 ~~[40 CFR 70.39]~~ or their equivalent.

(2) Each person licensed in accordance with this section shall perform a dry wipe test on each source containing more than 0.1 µCi (3.7 kilobecquerels) of americium-241 or radium-226 before transferring the source to a general licensee in accordance with §289.251(f)(4)(D) of this title. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate pressure. The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 0.005 µCi (0.185 kilobecquerel) of americium-241 or radium-226. If removable contamination from any source wipe test exceeds 0.005 µCi (0.185 kilobecquerels) of americium-241 or radium-226, the source is deemed to be leaking and it shall not be transferred to a general licensee.

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material

for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed in accordance with §289.256 of this title for use as a calibration, transmission, or reference source or for use of sealed sources listed in §289.256(rr), (bbb), and (ddd) [~~§289.256(bb), §289.256(ee), and §289.256(dd)~~] of this title will be issued if the agency approves the following information submitted by the applicant:

(1) - (4) (No change.)

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(f)(4)(G) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) documentation that the radioactive material will be prepared for distribution in prepackaged units of:

(A) iodine-125 in units not exceeding 10 microcuries (μCi) (0.37 megabecquerel) each;

(B) iodine-131 in units not exceeding 10 μCi (0.37 megabecquerel) each;

(C) carbon-14 in units not exceeding 10 μCi (0.37 megabecquerel) each;

(D) hydrogen-3 (tritium) in units not exceeding 50 μCi (1.85 megabecquerels) each;

(E) iron-59 in units not exceeding 20 μCi (0.74 megabecquerel) each;

(F) cobalt-57 in units not exceeding 10 μCi (0.37 megabecquerel) each;

(G) selenium-75 in units not exceeding 10 μCi (0.37 megabecquerel) each; or

(H) mock iodine-125 in units not exceeding 0.05 μCi (1.85 kilobecquerels) of iodine-129 and 0.005 μCi (0.185 kilobecquerel) of americium-241 each;

(2) evidence that each prepackaged unit will bear [~~bears~~] a durable, clearly visible label:

(A) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 μCi (0.37 megabecquerel) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 μCi (1.85 megabecquerels) of hydrogen-3 (tritium); 20 μCi (0.74 megabecquerel) of iron-59; or mock iodine-125 in units not exceeding 0.05 μCi (1.85 kilobecquerels) of iodine-129 and 0.005 μCi (0.185 kilobecquerel) of americium-241; and

(B) (No change.)

(3) - (4) (No change.)

(q) (No change.)

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material

for use by persons authorized in accordance with §289.256 of this title will be issued if the agency approves the following information submitted by the applicant:

(A) evidence that the applicant is at least one of the following:

(i) registered [~~or licensed~~] with the United States Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug in accordance with Title 21, CFR, §207.20(a) [~~manufacturer~~];

(ii) registered or licensed with a state agency as a drug manufacturer; [~~or~~]

(iii) (No change.)

(iv) operating as a nuclear pharmacy within a federal medical institution; or

(v) a positron emission tomography (PET) drug production facility registered with a state agency.

(B) - (C) (No change.)

(2) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs and shall have procedures for the use of the instrumentation. The licensee shall measure, by direct measurement or by a combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(A) - (C) (No change.)

(3) A licensee described in paragraph (1)(A)(iii) or (iv) of this subsection shall prepare radioactive drugs for medical use as defined [~~described~~] in §289.256 of this title with the following provisions. [~~:]~~

(A) Radioactive drugs shall be prepared by either an authorized nuclear pharmacist, as specified in subparagraphs (B) and (C) of this paragraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in §289.256(s) of this title.

[~~(A) radioactive drugs shall be prepared by a nuclear pharmacist(s) designated in the application as the individual user(s) who has completed the training and experience requirements specified in §289.256 of this title;~~]

(B) A pharmacist shall be allowed to work as an authorized nuclear pharmacist if:

(i) the individual qualifies as an authorized nuclear pharmacist as defined in §289.256 of this title;

(ii) the individual meets the requirements specified in §289.256(k)(2) and (m) of this title, and the licensee has received from the agency, an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) the individual is designated as an authorized nuclear pharmacist in accordance with subparagraph (C) of this paragraph.

(C) May designate a pharmacist, as defined in §289.256 of this title, as an authorized nuclear pharmacist if:

(i) the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material; and

(ii) the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe or at all other pharmacies prior to the effective date of this rule as noticed by the NRC or the agency.

(D) Provide the following to the agency:

(i) a copy of each individual's certification by a specialty board whose certification process has been recognized by the NRC, agency, or an agreement state as specified in §289.256(k)(1) of this title with the written attestation signed by a preceptor as required by §289.256(k)(2)(C) of this title; or

(ii) the agency, NRC, or another agreement state license, or

(iii) the permit issued by a broad scope licensee or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(iv) documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe or at all other locations of use prior to the effective date of this rule as noticed by the NRC or the agency; and

(v) a copy of the Texas State Board of Pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, in accordance with subparagraph (B)(i) and (iii) of this paragraph, the individual to work as an authorized nuclear pharmacist.

(E) ~~[(B)]~~ The ~~[the]~~ radiopharmaceuticals for human use shall be processed and prepared according to instructions that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit. ~~[-]~~

(F) ~~[(C)]~~ If ~~[if]~~ the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of three years. ~~[-; and]~~

~~[(D)] provide to the agency a copy of each individual's certification by the Texas State Board of Pharmacy or the permit issued by a licensee of broad scope, and a copy of the state pharmacy license. If the licensee adds a nuclear pharmacist(s) to the license, this shall be completed no later than 30 days after the date that the licensee allows the individual(s) to work as a nuclear pharmacist.]~~

(4) Nothing in this subsection relieves the licensee from complying with applicable FDA, or other federal~~[-]~~ and state requirements governing radioactive drugs.

(s) - (w) (No change.)

(x) Specific terms and conditions of licenses.

(1) - (2) (No change.)

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive material licensed to the locations and purposes authorized in the license. Radioactive material shall not be used or stored in residential locations unless specifically authorized by the agency.

(4) (No change.)

(5) Each licensee shall notify the agency's Radiation Safety Licensing Branch ~~[agency]~~, in writing, immediately following the fil-

ing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(6) The notification in paragraph (5) ~~[(4)]~~ of this subsection shall include:

(A) - (B) (No change.)

(7) - (8) (No change.)

(9) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with §289.256 of this title. The licensee shall record the results of each test and retain each record for 3 years after the record is made for inspection by the agency.

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(1) Except as provided in paragraph (2) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license. ~~[Expiration of the specific license does not relieve the licensee of the requirements of this chapter.]~~

(2) - (17) (No change.)

(z) - (dd) (No change.)

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the State of Texas provided that:

(A) - (C) (No change.)

(D) the out-of-state licensee supplies such other information as the agency may request; ~~[and]~~

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this subsection except by transfer to a person:

(i) (No change.)

(ii) exempt from the requirements for a license for such material in accordance with §289.251(e)(1) of this title; and ~~[-]~~

(F) The out-of-state licensee shall have the following documents in their possession at all times when conducting work in Texas, and make them available for agency review upon request:

(i) a copy of the agency letter granting the licensee reciprocal recognition of their out-of-state license;

(ii) a copy of the licensee's operating and emergency procedures;

(iii) a copy of the licensee's radioactive material license;

(iv) a copy of all applicable sections of 25 TAC, Chapter 289; and

(v) a copy of the completed BRC Form 252-3 notifying the agency of the licensee's intent to work in Texas.

(2) - (3) (No change.)

(ff) - (hh) (No change.)

(ii) Increased controls (ICs). Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in subsection (jj)(9) of this section shall:

(1) (No change.)

(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern RAM QC and devices.

(B) - (C) (No change.)

(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC [~~U.S. Nuclear Regulatory Commission (NRC)~~] required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the M&D [~~manufacturing and distribution~~] licensee providing the service.

(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of RAM QC [~~radioactive material quantities of concern~~]. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to RAM QC [~~radioactive material quantities of concern~~] and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in subsection (jj)(9) of this section.

(A) - (E) (No change.)

(4) (No change.)

(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection (jj)(9) of this section per consignment, the licensee shall:

(A) Notify the NRC Director, Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of RAM QC [~~Radioactive Material Quantities of Concern (RAM QC)~~]. The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(B) (No change.)

(6) - (8) (No change.)

(9) The licensee shall retain documentation required by these ICs [~~increased controls~~] for inspection by the agency for three years after they are no longer effective.

(A) - (D) (No change.)

(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these ICs [~~increased controls~~] for three years.

(10) Detailed information generated by the licensee that describes the physical protection of RAM QC [~~radioactive material quantities of concern~~], is sensitive information and shall be protected from unauthorized disclosure.

(A) - (B) (No change.)

(jj) Appendices.

(1) (No change.)

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(jj)(2)
~~[Figure: 25 TAC §289.252(jj)(2)]~~

(3) - (8) (No change.)

(9) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require ICs [~~increased controls (ICs)~~]:

(A) - (C) (No change.)

(D) quantities of radioactive materials used to determine quantities of concern. The following table contains quantities of radioactive materials to be used in determining a quantity of concern.

Figure: 25 TAC §289.252(jj)(9)(D)
~~[Figure: 25 TAC §289.252(jj)(9)(D)]~~

(kk) Requirements for the issuance of specific licenses for a medical facility or educational institution to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to licensees in its consortium.

(1) A license application will be approved if the agency determines that an application from a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use in accordance with §289.256 of this title includes:

(A) a request for authorization for the production of PET radionuclides or evidence of an existing license issued in accordance with this section, the NRC, or another agreement states requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

(B) evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in subsection (r)(1)(A) of this section;

(C) identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in subsection (r)(3)(B) of this section; and

(D) information identified in subsection (r)(1)(B) of this section on the PET drugs to be noncommercially transferred to members of its consortium.

(2) Authorization in accordance with paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

(3) Each licensee authorized in accordance with paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(A) satisfy the labeling requirements in subsection (r)(1)(C) of this section for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium; and

(B) possess and use instrumentation meeting the requirements of §289.202(p)(2)(D) of this title to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in subsection (r)(2) of this section.

(4) A licensee that is a pharmacy authorized in accordance with paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(A) an authorized nuclear pharmacist that meets the requirements in subsection (r)(3)(B) of this section; or

(B) an individual under the supervision of an authorized nuclear pharmacist as specified in §289.256(s) of this title.

(5) A pharmacy, authorized in accordance with paragraph (1) of this subsection to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of subsection (r)(3)(D) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

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Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 116. GENERAL PROVISIONS-- SUBSEQUENT INJURY FUND

28 TAC §116.11, §116.12

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §116.11 (relating to Request for Reimbursement or Refund from the Subsequent Injury Fund) and §116.12 (relating to Subsequent Injury Fund Payment/Reimbursement Schedule).

The proposed amendments are necessary for consistency with the Labor Code and to implement the amendments to Labor Code §§403.006, 408.0041, and 408.042 enacted by Senate Bill (SB) 1169, 80th Legislature, Regular Session, effective September 1, 2007. Amended Labor Code §403.006 provides that the subsequent injury fund is liable for the reimbursement of an insurance carrier as provided for by Labor Code §408.0041(f-1).

New Labor Code §408.0041(f-1) requires the subsequent injury fund to reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier based on the opinion of a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the Commissioner of Workers' Compensation (Commissioner) or a court.

Amended Labor Code §408.042(g) added the provision that an insurance carrier is entitled to apply for and receive reimbursement from the subsequent injury fund for the amount of death benefits, in addition to the amount of other income benefits, paid to an employee that are based on employment other than the employment during which the compensable injury occurred.

Proposed amendments to §116.11. Proposed amendments to §116.11 include deletion of the term "Refund" in the title of the section and throughout the section to provide consistency with Labor Code §403.006. Proposed amendments to §116.11(a)(1) remove the reference to the State Office of Administrative Hearings to be consistent with the Labor Code §§403.006, 408.0041, and 410.209. The proposed amendments to §116.11(a)(2) add language to be more consistent with Labor Code §403.007. Proposed amendments to §116.11(a)(3) add language to conform to current nomenclature and clarifies a legal reference. Proposed amendments to §116.11(a)(4) implement §408.042(g) by providing for insurance carrier reimbursement from the subsequent injury fund for income or death benefits paid to an injured employee or a legal beneficiary attributable to multiple employment. Proposed amendments to §116.11(a)(5) implement Labor Code §408.0041(f-1) by providing that an insurance carrier may request a reimbursement from the subsequent injury fund for any overpayment of benefits made by the insurance carrier based on an opinion of a designated doctor if the opinion is later reversed or modified. Proposed amendments to §116.11(a)(6) contain language to conform to current nomenclature, including using "commissioner" and "division" as appropriate, and deletes language already included in Labor Code §413.0141, which is cited. The proposed amendments to §116.11(b) add language to conform to current nomenclature, "insurance carrier" and "injured employee," and adds language to implement Labor Code §408.0041 and §408.042. Proposed amendments to §116.11(c) add language to conform to current nomenclature, add language to clarify the contents of a request for reimbursement; and, remove the reference to the State Office of Administrative Hearings to be consistent with Labor Code §§403.006, 408.0041, and 410.209. Proposed amendments to §116.11(d) add language to clarify with greater specificity the procedure for requesting a reimbursement. Proposed amendments to §116.11(e) clarify that subsection (e) applies to multiple employment-based requests and clarify the information that must be included in a reimbursement request. Proposed amendments to §116.11(f) update the submission for reimbursement example and add "the total amount of reimbursement requested" to the information that must be provided in the reimbursement request. Proposed amendments to §116.11(g) implements Labor Code §408.0041(f-1) by setting forth the request for reimbursement procedure and the necessary information that must be included in the request. Proposed amendments to §116.11(h) clarify that

the insurance carrier is required to file any other information reasonably required by the subsequent injury fund administrator and must also notify the administrator of any pending disputes to evaluate the request.

Proposed amendments to §116.12. Proposed amendments to §116.12(a) add language to conform to current nomenclature and clarifies a legal reference. The proposed amendments to §116.12(c) provide that claims filed under §116.12(a)(1), (2) and (3) should be processed in the fiscal quarter following the quarter in which the request was submitted and no later than one year following the submission. In accordance with §403.006(d), proposed amendments to §116.12(d) include a separate provision for the review and processing of requests under Labor Code §408.042(g) relating to multiple employment and claims under Labor Code §413.0141 relating to initial pharmaceutical coverage. The proposed amendments to §116.12(d) delete language that applies to internal administrative procedures. Proposed amendments to §116.12(e) add language to conform to current nomenclature and clarify a legal reference. Proposed amendments to §116.12(f) provide that the subsection only applies to reimbursement request relating to multiple employment and pharmaceutical claims, add language to conform to current nomenclature and clarify a date reference. Current §116.12(g) is proposed to be deleted because it applies to administrative procedures of the Texas Workers' Compensation Commission and is no longer necessary as a result of the restructuring and reorganization of that agency into the Texas Department of Insurance. Proposed amendments to §116.12(h) reletter the subsection to subsection (g) and add language which provides the insurance carrier must notify the subsequent injury fund administrator of any pending disputes and that the administrator will refrain from acting on an insurance carrier's request for reimbursement from the subsequent injury fund until final resolution of all disputes affecting the request for reimbursement.

The Fiscal Note for SB 1169, dated May 18, 2007, estimated that the impact on the Subsequent Injury Fund would be \$1,128,908 each year of the first five years the statute will be in effect. The proposed rules do not increase the fiscal impact beyond the impact of SB 1169.

Mr. Dirk Johnson, General Counsel, has determined that for each year of the first five years the proposed rules will be in effect there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Mr. Johnson has also determined that for each year of the first five years the proposed rules will be in effect the public benefit anticipated as a result of enforcing the rules will be improved operation of the subsequent injury fund. The proposed rules do not increase costs to system participants beyond the impact estimated by SB 1169.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on small or micro-businesses who may be required to comply with the proposed rules.

The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's

cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses.

The Division has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225 and therefore a regulatory flexibility analysis is not required.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 31, 2009. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/rules/proposedrules/index.html> or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on August 31, 2009. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§402.00111, 402.061, 403.006, 408.0041, and 408.042. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner of Workers' Compensation the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 403.006 establishes the subsequent injury fund. Section 408.0041 provides for designated doctor examinations to resolve various questions about the injured employee's injury. Section 408.042 provides for the calculation of the average weekly wage for a part-time employee or an employee with multiple employment.

The following sections are affected by this proposal:

§116.11: Labor Code §408.0041(f-1) and §408.042(g)

§116.12: Labor Code §408.0041(f-1) and §408.042(g)

§116.11. Request for Reimbursement ~~of Refund~~ from the Subsequent Injury Fund.

(a) An insurance [A] carrier may request:

(1) reimbursement from the Subsequent Injury Fund ("SIF"), pursuant to Labor Code §403.006(b)(2), for an overpayment of income, death, or medical benefits when the insurance carrier has made an unrecoupable overpayment pursuant to decision of a hearing officer or the appeals panel or an interlocutory order, and that decision or order is reversed or modified by final arbitration, order, or decision of the commissioner [~~commission~~], [~~the State Office of Administrative Hearings~~] or a court of last resort; [~~or~~]

(2) reimbursement from the SIF [~~a refund of death benefits~~] pursuant to Labor Code §403.007(d) for death benefits paid to the SIF prior to a legal beneficiary determined to be entitled [~~being eligible~~] to receive death benefits;

(3) for a compensable injury that occurs on or after July 1, 2002, reimbursement from the SIF for the amount of income

benefits paid to an injured employee ~~[a worker that is]~~ attributable to multiple employment and ~~[is]~~ paid pursuant to Labor Code §408.042 ~~[relating to Multiple Employment];~~ ~~[or]~~

(4) for a compensable injury that occurs on or after September 1, 2007, reimbursement from the SIF for the amount of income or death benefits paid to an injured employee or a legal beneficiary attributable to multiple employment and paid pursuant to Labor Code §408.042;

(5) reimbursement from the SIF, pursuant to Labor Code §408.0041(f) and (f-1), for an overpayment of benefits made by the insurance carrier based on the opinion of the designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court; or

(6) ~~[(4)]~~ ~~[a]~~ reimbursement from the SIF made in accordance with rules adopted by the commissioner ~~[commission]~~ pursuant to Labor Code §413.0141 ~~[- Initial Pharmaceutical Coverage for injuries determined not to be compensable]~~. For purposes of this subsection only, an injury is determined not to be compensable following:

(A) The final decision of the commissioner ~~[commission]~~ or the judgment of the court of last resort; or

(B) A claimant's failure to respond within one year of a timely dispute of compensability filed by an insurance carrier. In this instance only, the effective date of the determination of non compensability is one year from the date the dispute is filed with the division ~~[commission]~~ by the insurance carrier.

(i) A determination under this paragraph ~~[subsection]~~ does not constitute final adjudication. It does not preclude a party from pursuing their claim through the division's ~~[commission's]~~ dispute resolution process and it does not permit a health care provider to pursue a private claim against the claimant.

(ii) If the claim is later determined to be compensable, the insurance carrier shall reimburse the SIF ~~[subsequent injury fund]~~ for any initial pharmaceutical payment which the SIF previously reimbursed ~~[refunded]~~ to the insurance carrier. The insurance carrier's reimbursement of the SIF shall be paid within the timeframe the insurance carrier has to comply with the agreement, decision and order, or other judgment which found the claim to be compensable.

(b) The amount of reimbursement that the insurance carrier may be entitled to is equal to the amount of unrecoupable overpayments paid and does not include any amounts the insurance carrier overpaid voluntarily or as a result of its own errors. An unrecoupable overpayment of income or death benefits for the purpose of reimbursement from the SIF only includes those benefits that were overpaid by the insurance carrier pursuant to an interlocutory order, a designated doctor opinion or decision which were finally determined to be not owed and which, in the case of an overpayment of income or death benefits to the injured employee or legal beneficiary, were not recoverable or convertible from other income or death benefits.

(c) Requests for reimbursement attributable to subsection (a)(1) of this section, insurance carrier claims of benefit overpayments made under an interlocutory order or decision of the commissioner ~~[commission]~~ that is later reversed or modified by final arbitration, order, or decision of the commissioner ~~[commission, the State Office of Administrative Hearings]~~, or court of last resort shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested ~~[or refund]~~;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, ~~[total amount of payment requested,]~~ the payees, ~~[and]~~ the periods of benefits paid, all plain language notices ("PLNs") regarding the payment of benefits, all certifications of maximum medical improvement and all assignments of impairment rating ~~[as well as documentation that shows that the overpayment was unrecoupable as described in subsection (b), if applicable]~~;

(3) the name, address, and federal employer identification number of the payee for any reimbursement ~~[or refund]~~ that may be due;

(4) copies of all ~~[relevant]~~ orders and decisions (Benefit Review Conferences, Interlocutory Orders, Contested Case Hearing Decision & Orders, Appeal Panel Decisions, and Court orders) regarding the payment and/or the circumstances of payment, ~~[that relate to the payment]~~ for which reimbursement is being requested along with an indication of which document is the final decision on the matter;

(5) copies of all reports and DWC forms filed by the employer with the insurance carrier ~~[including, but not limited to, the Employer's First Report of Injury, the Wage Statement, and all Supplemental Reports of Injury for overpayments of income benefits]~~; and

(6) if an overpayment of medical benefits, copies of all medical bills and preauthorization request forms associated with the overpayment as well as all Independent Review Organization ("IRO") decisions, fee dispute decisions and Contested Case Hearing Decision and Orders, Appeals Panel Decisions, and court orders regarding medical disputes ~~[for overpayments of medical benefits]~~.

(d) Requests for reimbursement pursuant ~~[related]~~ to subsection (a)(2) of this section, related to a reimbursement ~~[refund]~~ of death benefits paid to the SIF prior to a legal beneficiary being determined to be entitled ~~[eligible]~~ to receive death benefits, shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested ~~[or refund]~~;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, ~~[total amount of payment requested,]~~ the payees, and the periods of benefits paid;

(3) the name, address, and federal employer identification number of the payee for any reimbursement ~~[or refund]~~ that may be due;

(4) the documentation the legal beneficiary provided with the claim for death benefits in accordance with ~~[under]~~ §122.100 of this title (relating to Claim for Death Benefits); and

(5) if applicable ~~[the agreement]~~, the final award of the commissioner ~~[commission]~~, or the final judgment of a court of competent jurisdiction determining that the legal beneficiary is entitled to the death benefits ~~[if entitlement to benefits had been disputed]~~.

(e) Requests for reimbursement pursuant to subsection (a)(3) or (4) of this section, regarding multiple employment, shall be submitted on an annual basis for the payments made during the same or previous fiscal year. The fiscal year begins each September 1st and ends on August 31st of the next calendar year. For example, insurance carrier payments made during the fiscal year from September 1, 2009 ~~[9/1/02]~~ through August 31, 2010, ~~[8/31/03]~~ must be submitted prior to August 31, 2011 ~~[8/31/04]~~. Any claims for insurance carrier payments related to multiple employment that are not submitted within the required time-

frame will not be reviewed for reimbursement. These requests shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested ~~[or refund]~~;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, ~~[total amount of payment requested,]~~ the payees, and the periods of benefits paid, all PLNs regarding the payment of benefits, as well as documentation that shows that the overpayment was unrecoupable as described in subsection (b) of this section, if applicable;

(3) the name, address, and federal employer identification number of the payee for any reimbursement ~~[or refund]~~ that may be due;

(4) ~~[all]~~ information documenting the injured employee's average weekly wage amounts paid from all non claim employment held at the time of the work related injury pursuant to §122.5 of this title (relating to Employee's Multiple Employment Wage Statement~~[-]~~); and

(5) ~~[all]~~ information documenting the injured employee's average weekly wage amounts paid based on employment with the claim employer.

(f) Requests for reimbursement attributable to initial pharmaceutical coverage shall be submitted in the same or in the following fiscal year after a determination that the injury is not compensable in accordance with subsection (a)(6) ~~[(a)(4)]~~ of this section. The fiscal year begins each September 1st and ends on August 31st of the next calendar year. For example, if an injury is determined to be not compensable during the fiscal year from September 1, 2009 ~~[9/1/02]~~ through August 31, 2010 ~~[8/31/03]~~, the request for reimbursement pursuant to Labor Code §413.0141 must be submitted prior to August 31, 2011 ~~[8/31/04]~~. Any claims for insurance carrier payments related to initial pharmaceutical coverage that are not submitted within the required timeframe will not be reviewed for reimbursement. The requests shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested ~~[or refund]~~;

(2) a detailed payment record showing the dates of payments, specifically including documentation of payment of Initial Pharmaceutical Coverage, (i.e., first seven days following the date of injury); the amounts of the payments, the purpose of payments, ~~[total amount of payment requested,]~~ the payees, and the periods of benefits paid;

(3) the name, address, and federal employer identification number of the payee for any reimbursement ~~[or refund]~~ that may be due;

(4) copies of any prescription filled and documentation that the pharmaceutical services were provided during the first seven days following the date of injury, not counting the actual date the injury occurred; and

(5) documentation of the final resolution of any dispute which determines the injury is not compensable either from the commissioner ~~[commission]~~ or court of last resort, or documentation of a claimant's failure to respond in accordance with subsection (a)(6)(B) of this section.

(g) Requests for reimbursement attributable to subsection (a)(5) of this section, insurance carrier claims of benefit overpayments made pursuant to a designated doctor opinion that is later reversed or

modified by final arbitration award or a final order or decision of the commissioner or a court, shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, the payees, and the periods of benefits paid; all PLNs regarding the payment of benefits and all certifications of maximum medical improvement and all assignments of impairment rating.

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) copies of all designated doctor opinions (including responses to letters of clarification) and orders and decisions (IRO decisions, dispute decisions, Interlocutory Orders, Contested Case Hearing Decision and Orders, Appeal Panel Decisions, and Court orders) regarding the designated doctor opinion and the payment, or the circumstances requiring payment made pursuant to the designated doctor opinion for which reimbursement is being requested along with an indication of which document is the final decision on the matter;

(5) copies of all reports and DWC forms filed by the employer with the insurance carrier; and

(6) for an overpayment of medical benefits, copies of all medical bills and preauthorization request forms associated with the overpayment.

(h) ~~[(g)]~~ An insurance carrier seeking reimbursement from the SIF shall timely provide any ~~[Any]~~ other documentation reasonably required by the SIF administrator to determine entitlement to reimbursement or payment from the SIF and the amount of reimbursement to which the insurance carrier is entitled. The insurance carrier must also provide notice to the SIF of any pending dispute or other information that may affect the workers' compensation claim that is the subject of a request for reimbursement and all litigation affecting the request for reimbursement.

§116.12. Subsequent Injury Fund Payment/Reimbursement Schedule.

(a) Claims against the Subsequent Injury Fund ("SIF") shall be paid in the following priority:

(1) claims by insurance carriers for reimbursement made pursuant to Labor Code §403.007 ~~[of the Aet]~~ and §132.10(g) of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund);

(2) claims by injured workers for lifetime benefits, as provided by Labor Code §408.162 ~~[of the Aet]~~;

(3) claims by insurance carriers for reimbursement, made pursuant to Labor Code §§408.0041, 410.209 and ~~[(§)413.055]~~ ~~[of the Aet]~~ and §116.11 of this title (relating to Request for Reimbursement ~~[or Refund]~~ from the Subsequent Injury Fund)~~[-]~~; and

(4) claims by insurance carriers for reimbursement made pursuant to Labor Code §408.042(g) ~~[of the Aet]~~ relating to multiple employment and those in accordance with division ~~[commission]~~ rule(s) adopted pursuant to Labor Code §413.0141 ~~[of the Aet relating to initial pharmaceutical coverage]~~.

(b) The SIF uses the fiscal year September 1 through August 31.

(c) Claims described in subsection (a)(1), ~~[(a)](2)~~ and ~~[(a)](3)~~ of this section should be processed in the fiscal quarter following the quarter in which the request was submitted and no later than one year following the submission. ~~[may be reviewed and ordered paid by the SIF administrator at any time during the fiscal year.]~~

(d) Claims described in subsection (a)(4) of this section should be processed in the first fiscal quarter following the fiscal year in which the request was submitted but may be reviewed and ordered paid by the SIF administrator as provided by subsections (e) and (f) of this section. ~~[Following the end of the fiscal year, the administrator of the SIF shall review:]~~

~~[(1) the SIF available balance and projected revenues and liabilities;]~~

~~[(2) the current claims against the SIF, in the order of priorities set out in subsection (a) of this section; and]~~

~~[(3) all completed requests for reimbursement as described in §116.11 and §132.10 of this title, received during the prior fiscal year, except as provided in subsection (g) of this section.]~~

(e) In accordance with Labor Code §403.006(d) ~~[of the Act]~~, if the commissioner ~~[commission]~~ determines that partial payments of the claims described in subsection (a)(4) of this section are ~~[is]~~ necessary, partial payments shall be calculated in the following manner:

(1) The total amount of completed eligible requests for reimbursement submitted under subsection (a)(4) of this section that are received during the previous fiscal year will be used to establish a baseline amount.

(2) The baseline amount will be divided by the total amount of SIF funding available as determined in accordance with the Labor Code ~~[Act]~~.

(3) The resulting fraction will be equally applied to all claims submitted under subsection (a)(4) to determine the partial reimbursement amount.

(4) If reimbursement requests are paid with partial payments, no further future recovery is available from the subsequent injury fund for the non-reimbursed portion of that particular request.

(f) If reimbursement requests are paid with partial payments, ~~[Following the end of each fiscal year,]~~ the SIF administrator shall, no later than October 30 of the following fiscal year, enter appropriate orders for claims described in subsection (a)(4) ~~[(a)(3)]~~ of this section. The order shall specify the amount the SIF shall pay to the insurance carrier.

~~[(g) The SIF administrator shall submit orders to the state comptroller for payment and send a copy of the order to the requesting carrier.]~~

(g) ~~[(h)]~~ The insurance carrier must provide notice to the SIF of any pending dispute or other information that may affect the workers' compensation claim that is the subject of a request for reimbursement and all litigation affecting the request for reimbursement. The SIF administrator will refrain from acting on an insurance ~~[a]~~ carrier's request for reimbursement ~~[or refund]~~ from the SIF until final ~~[dispute]~~ resolution of all disputes affecting the request for reimbursement ~~[the claim by a final decision of the commission, State Office of Administrative Hearings or the court of last resort except as provided in §116.11(a)(3) and (4)].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 804-4703



CHAPTER 143. DISPUTE RESOLUTION REVIEW BY THE APPEALS PANEL

28 TAC §§143.2 - 143.5

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §143.2 (relating to Description of the Appeal Proceeding), §143.3 (relating to Requesting the Appeals Panel to Review the Decision of the Hearing Officer), §143.4 (relating to Responding to a Request for Review by the Appeals Panel) and §143.5 (relating to Decision of the Appeals Panel). These amendments are necessary to implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005; and HB 4545, enacted by the 81st Legislature, Regular Session, effective September 1, 2009. HB 7 amended Chapter 410, Subchapter E of the Labor Code by amending §§410.201, 410.203, and 410.204. HB 4545 amended Chapter 410, Subchapter E of the Labor Code by amending §410.252.

The legislature amended §§410.201, 410.203, and 410.204 after considering recommendations made by the Sunset Staff Report on the Texas Workers' Compensation Commission, April 2004 (Report). The Report concluded that the majority of the appeals panel workload involved writing decisions that simply affirmed the hearing officers' decisions.

The amendments to §§410.201, 410.203 and 410.204 made three changes regarding the appeals panel. First, Labor Code §410.201 was amended to provide that appeals judges, in a three-member panel, shall conduct administrative appeals proceedings. Second, §410.203 was amended to only allow the appeals panel to issue decisions if the appeals panel is reversing or remanding a decision of a hearing officer. The amendment to §410.203 also required the appeals panel to maintain a precedent manual of precedent-establishing decisions. Section 410.203 further notes that the appeals panel may not remand a case more than once. Third, under §410.204, the decision of the hearing officer becomes final after 45 days if the appeals panel has not reversed or remanded the decision of the hearing officer thus eliminating the redundancy of issuing written decisions affirming the hearing officer's decisions.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Proposed amendment of §143.2. Proposed subsection (b) amendments remove the portion of the rule that allows the appeals panel to affirm the decision of the hearing officer, clarify that the appeals panel may reverse the decision of the hearing officer and render a new decision or reverse and remand for a second contested case hearing, and add that the appeals panel may not remand a case more than once. The changes are in accordance with §410.203.

Proposed amendment of §143.3. Proposed subsection (a)(3) adds the word "deemed" to receipt which clarifies that the request for the appeals panel to review the decision of the hearing officer must be filed not later than the 15th day after the deemed receipt of the hearing officer's decision. General rules for written communications to and from the agency are governed by §102.5 of this title (relating to General Rules for Written Communications to and from the Commission). Deemed receipt shall be determined pursuant to §102.5(d). Proposed subsection (a)(3) further clarifies that an untimely request for the appeals panel to review the decision of the hearing officer will not be reviewed, regardless of whether it is filed in the Division's central office or in a Division field office. Proposed subsection (b) removes rule language that requires the Division to attempt to contact the party or parties who will be required to respond to the request for an appeals panel review to determine if a copy of the request for review was served and received by that party; and instead it provides that if it is not clear from the request for review that the party requesting the review has properly served a copy of the request on the other party or parties, the Division will provide a copy of the request to the other party expeditiously. Proposed subsection (d) deletes rule language regarding when the parties are deemed to receive the hearing officer's decision and adds rule language that a request for the appeals panel to review the decision of the hearing officer must be filed not later than the 15th day after the appealing party is deemed to have received the hearing officer's decision. The request is presumed to be timely filed if it is mailed on or before the 15th day and received by the Division not later than the 20th day after deemed receipt.

Proposed amendment of §143.4. Proposed subsection (a)(3) provides that a response to a request for review by the appeals panel must be filed not later than the 15th day after the request is deemed received by the respondent. Proposed subsection (b) removes rule language that requires the Division to attempt to contact the party to determine if a copy of the response was served and received by the other party or parties; and instead it provides that if it is not clear that from the response that the party has properly served a copy of the response on the other party or parties, the Division must provide a copy of the response expeditiously. Proposed subsection (c) removes rule language that a response shall be presumed to be timely served. Proposed subsection (c) also removes rule language that the response may be timely filed with the Division if received by a party other than the Division because the Division has no method of knowing when the other party, listed in subsection (c)(2), actually receives a response; further, the Division does not use the "other party" receipt date to calculate a timely response. Proposed subsection (c) also adds the word "deemed" to receipt.

Proposed amendment of §143.5. Proposed subsection (a) changes the time the appeals panel can take to issue its written decision from not later than the 30th day to the 45th day after the response is filed with the Division. Proposed subsection (b) also lengthens the time at which the hearing officer's decision becomes final by 15 days. If the appeals panel does not issue a decision by the 45th day after the date the response is filed with the Division, the hearing officer's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the Division on that day. Proposed subsection (c) requires the appeal panel decisions to be filed with the Division rather than the director of hearings as now required by §410.204(a). Proposed subsection (d) removes rule language that a decision of the appeals panel that is not appealed for judicial review be-

comes final on the 41st day after the date the decision was filed, or deemed filed with the director of the hearings division, and instead provides for the decision becoming final on the 46th day after the Division mailed the party the decision of the appeals panel. Proposed subsection (d) updates the statutory citation to §410.252 to be consistent with HB 4545 and implements HB 4545 by providing that for purposes of this section, the mailing date is considered to be the fifth day after the decision of the appeals panel was filed with the Division. Proposed subsection (d) also removes rule language stating that failure to comply with a final decision or order within 20 days of its becoming final is a Class A administrative violation, with a penalty not to exceed \$10,000 because it is duplicative of statutory provisions. Specific references when there are statutory provisions are unnecessary.

This proposal also replaces all references in §§143.2, 143.3, 143.4, and 143.5 of this title to the "commission" with references to the "division" due to the legislative changes made by HB 7, in abolishing the Texas Workers' Compensation Commission and transferring the powers and duties of that former agency to the Division of Workers' Compensation of the Texas Department of Insurance.

Robert E. Lang, Deputy Commissioner of Hearings, has determined that for each year of the first five years the proposed amendments will be in effect there will be minimal fiscal implication on state or local government as a result of enforcing or administering them. There will be no measurable effect on local employment or the local economy as a result of this proposal.

Mr. Lang has also determined that for each year of the first five years the proposed amendments will be in effect the public benefit anticipated as a result of administering and enforcing the rules will be more consistency in the dispute resolution process and greater efficiency in the application of workers' compensation laws and agency rules. There will be no effect on individuals as a result of this proposal.

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 31, 2009. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/rules/proposedrules/index.html> or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on August 31, 2009. If a hearing is held, written and oral comments presented at the hearing will be considered.

These amendments are proposed under the Labor Code §§402.00111, 402.061, 410.201, 410.202, 410.203, 410.204,

and 410.252(a). Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 410.201 provides that appeals judges, in a three member panel, shall conduct administrative appeals proceedings. Section 410.202 explains the mechanics of the request for appeal of the decision of a hearing officer, the time frames and the computation of time for both the party that appeals and the party that responds. Section 410.203 specifies that the appeals panel may reverse the decision of the hearing officer and render a new decision or reverse and remand for further consideration and development of evidence, with no more than one remand. Section 410.204 provides that the appeals panel must review each request and issue a written decision on each reversed or remanded case which must be issued not later than the 45th day after the date on which the written response to the request for the appeal is filed with the Division. Section 410.252(a) authorizes a party to seek judicial review by filing suit not later than the 45th day after the date on which the Division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the Division.

The following statutes are affected by this proposal:

§143.2: Labor Code §§402.00111, 402.061, and 410.203

§143.3: Labor Code §§402.00111, 402.061, and 410.202

§143.4: Labor Code §§402.00111, 402.061, and 410.204

§143.5: Labor Code §§402.00111, 402.061, 410.204, and 410.252(a)

§143.2. Description of the Appeal Proceeding.

(a) To review the decision of the hearing officer, the appeals panel considers the appellant's request, the respondent's response, and the record of the benefit contested case hearing. The parties do not appear in person before the panel.

(b) The appeals panel may:

~~[(1) affirm the decision of the hearing officer;]~~

~~(1) [(2)] reverse the decision of the hearing officer and render a new decision; or~~

~~(2) [(3)] reverse the decision of the hearing officer and remand to the hearing officer for a second benefit contested case hearing, which shall be set as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel). The appeals panel may not remand a case more than once.~~

§143.3. Requesting the Appeals Panel to Review the Decision of the Hearing Officer.

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer may request the appeals panel to review that decision. The request shall:

(1) be in writing;

(2) clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and state the relief the appellant wants granted;

(3) be filed with the Chief Clerk of Proceedings in the division's [commission's] central office in Austin not later than the 15th day after deemed receipt of the hearing officer's decision. Requests that

are timely submitted to a division [commission] location other than the Chief Clerk of Proceedings, such as a local field office of the division [commission], will be considered timely filed and forwarded to the division's [commission's] appeals panel for consideration, but this may result in delay in the processing of the request. Untimely requests, regardless of whether they are filed with the Chief Clerk of Proceedings in the division's [commission's] central office or in a different division field [commission] office, do not invoke the jurisdiction of the appeals panel and will not be reviewed by the appeals panel;

(4) be served on the other party on the same day filed with the division [commission]; and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached request for appeal on _____ (state the name of the other party or parties on whom a copy was served) by _____ (state the manner of service)." _____ Signature

(b) If it is not clear from the request for review that the party has properly served a copy of the request on the other party or parties, the [hearings] division will [shall attempt to contact the other party or parties and, if the contact indicates that the other party or parties have not received a copy of the request,] provide a copy of the request expeditiously.

(c) A party may make a conditional request for review by the appeals panel even if the overall contested case hearing decision is favorable. A timely request that indicates that the filing party seeks consideration only if the opposing party files a request for review will not be treated as a request for review unless an opposing party timely files a request. If an opposing party does file a timely request, the conditional request will be treated as a cross-appeal.

~~[(d) The commission shall deem that the parties received the hearing officer's decision;]~~

~~[(1) five days after the date the commission's letter was mailed to the parties, unless the great weight of evidence indicates otherwise;]~~

~~[(2) the first working day after the date the written communication was placed in a carrier's Austin representative box located at the commission's main office in Austin unless the great weight of evidence indicates otherwise;]~~

~~[(3) the working day that it was faxed by the commission, if faxed during normal business hours as defined in §102.3(e); otherwise, the next working day after the date faxed; or]~~

~~[(4) the working day that it was electronically transmitted by the commission, if transmitted during normal business hours as defined in §102.3(e); otherwise, the next working day after the date electronically transmitted;]~~

~~[(e) A request made under this section shall be presumed to be timely filed or timely served if it is:]~~

~~[(1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and]~~

~~[(2) received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision;]~~

(d) ~~[(4)]~~ A request shall be filed not later than the 15th day after the appealing party is deemed to have received the hearing officer's decision. Saturdays and Sundays and holidays listed in ~~[Section] §662.003, Government Code~~, are not included in the computation of this 15-day period ~~[the time in which a request for an appeal must be filed]~~. A request made under this section shall be presumed to be timely filed or timely served if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the hearing officer's decision, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the hearing officer's decision.

§143.4. Responding to a Request for Review by the Appeals Panel.

(a) The other party shall respond to the appellant's request. The response shall:

(1) be in writing;

(2) clearly and concisely support each issue in the hearing officer's decision that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;

(3) be filed with the Chief Clerk of Proceedings in the ~~division's [commission's]~~ central office in Austin not later than the 15th day after the request was deemed received by the respondent. Responses that are timely submitted to a ~~division [commission]~~ location other than the Chief Clerk of Proceedings, such as a local field office of the ~~division [commission]~~, will be considered filed timely and forwarded to the ~~division's [commission's]~~ appeals panel for consideration, but this may result in delay in the processing of the response. Untimely responses, regardless of whether they are filed with the Chief Clerk of Proceedings or in a different ~~division [commission]~~ office, will not be reviewed by the appeals panel;

(4) be served on the appellant on the same day filed with the ~~division [commission]~~; and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached response to a request for appeal on _____ (state the name of the other party or parties on whom a copy was served) by _____ (state the manner of service)." _____ Signature

(b) If it is not clear from the response that the party has properly served a copy of the response on the other party or parties, the ~~[hearings]~~ division shall ~~[attempt to contact the other party or parties and, if the contact indicates that the other party or parties have not received a copy of the response,]~~ provide a copy of the response expeditiously.

(c) A response made under this section shall be presumed to be timely filed ~~[or timely served]~~ if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the appellant's request, as provided in subsection (a) of this section; and

(2) received by the ~~division [commission or other party]~~ not later than the 20th day after the date of deemed receipt of the appellant's request.

(d) Saturdays and Sundays and holidays listed in ~~[Section] §662.003, Government Code~~, are not included in the computation of the time in which a response must be filed.

§143.5. Decision of the Appeals Panel.

(a) Not later than the ~~45th [30th]~~ day after the date the response was filed with the ~~division [commission]~~, the appeals panel will issue its written decision, concluding with a separate paragraph stating words to the effect: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)", and file a copy with the ~~[director of the hearings]~~ division.

(b) If the appeals panel does not issue a written decision by the ~~45th [30th]~~ day after the date the response was filed with the ~~division [commission]~~, the hearing officer's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the ~~[director of the hearings]~~ division on that day.

(c) Not later than the seventh day after the appeals panel files its decision with the ~~[director of the hearings]~~ division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall send to each party a copy of the decision, or a notice that the hearing officer's decision has become final and constitutes the decision of the appeals panel.

(d) A decision of the appeals panel that is not appealed for judicial review, as provided by the Texas Labor Code ~~§410.252 [§410.251]~~, et seq., becomes final on the 46th ~~[41st]~~ day after the ~~division mailed the party the decision of the appeals panel. For purposes of this section the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed by the division. [date the decision was filed, or deemed filed, with the director of the hearings division. Failure to comply with a final decision or order within 20 days of its becoming final is a Class A administrative violation, with a penalty not to exceed \$10,000.]~~

(e) A decision of the appeals panel that is appealed for judicial review is binding on the parties for the duration of the judicial review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 2009.

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Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 804-4703



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) proposes amendments to Chapter 371, Subchapter B, §371.20, concerning In-

tended Use Plan, §371.24, concerning Disadvantaged Community Program through Loan Subsidies, and §371.25, concerning Criteria and Methods for Distribution of Funds for Disadvantaged Communities; Subchapter C, §371.39, concerning Review of Applications by the Executive Administrator; Subchapter D, §371.52, concerning Lending Rates; and Subchapter I, §§371.200 - 371.208, concerning Applications for Financial Assistance Filed in Response to Special Capitalization Grants.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE AMENDMENTS.

The American Recovery and Reinvestment Act of 2009 ("ARRA") provides funding under a strict time constraint. Any funded project that is not "under contract or construction" prior to February 17, 2010 will have its funding revoked and reallocated to other states. Accordingly, the Board proposes changes to the rules governing the Drinking Water State Revolving Fund (DWSRF) to better ensure that all projects listed above the ARRA DWSRF intended use plan ("IUP") funding line will be able to commence construction or be under contract by the February deadline. It is in the state's interest to ensure that provisional unlisted projects are standing by in the event it becomes clear a listed project will not meet the strict deadline. In that instance, a listed project would be de-listed, and a "ready to proceed" unlisted provisional project will be substituted, in order to ensure that Texas does not lose federal funding. To encourage prospective applicants to prepare a provisional application, a zero-percent interest loan will be made available to applicants who undertake the time and expense to prepare a "ready to proceed" application but subsequently fail to qualify for ARRA DWSRF funding.

In addition to provisional projects, some projects will rest "on the funding line" whereby there are insufficient funds in the federal grant to cover the entire project. It is in the state's interest to ensure that all funds in the federal grant are used, and for applicants whose projects fall "on the funding line," the state will first calculate the total amount of additional funds necessary to fund all projects on the funding line, and then redistribute ARRA funds from those projects that have 0.0% ARRA loan fund allocations to those that have ARRA grant fund allocations in order to fully fund all ARRA projects eligible for grants. Then the amount necessary to fund the resulting revised ARRA loan funds for those projects on the funding line will be supplemented with FY2010 DWSRF funds. The total amount of 2010 DWSRF funds necessary will equal the original total of the portions of projects on the funding line that were in excess of the original ARRA DWSRF allocations.

SECTION BY SECTION DISCUSSION.

Sections 371.20(e), 371.24(f), 371.25(a), 371.39(c), 371.52(h), 371.201, 371.203(g), 371.207(c) and (d).

These amended rules allow the executive administrator to earmark projects for 0.0% interest loans in two circumstances. First, the amended rules allow the executive administrator to designate a project as "provisional". In the context of the DWSRF ARRA stimulus grant, the Board proposes to have alternative projects ("provisional projects") standing by and ready to proceed in the event it becomes clear that a listed project cannot make the strict time constraints of the federal stimulus bill. Applicants whose projects are listed as provisional are asked to prepare applications in anticipation of being selected to replace a project that fails to proceed in a timely fashion. The rules provide that applicants that are invited to prepare "ready to proceed"

applications but subsequently are not invited to apply for special capitalization grant funding will receive invitations to apply for 0.0% interest loans from the regular DWSRF program with priority consideration.

Second, the amended rules allow the executive administrator to provide priority consideration under the regular DWSRF program for projects that fall on the special capitalization grant funding line. When the special capitalization grant funds reach their limit, and a project is left with only partial funding under the grant, the amended rules permit the executive administrator to give priority consideration to those applicants to fund the remaining portion of their project with a 0.0% interest loan from the base DWSRF program following a redistribution of funds within the ARRA allocations in order to fully fund those projects eligible for ARRA grants.

Provisional projects and partially funded projects are defined in §371.201(2) and (3). The executive administrator is given authority to designate a project as such under §371.203(g). The executive administrator is given authority to add these projects to the regular DWSRF program intended use plan under §371.207(c) and (d). Sections 371.20(e), 371.24(f), 371.25(a) and 371.52(h) amend the rules for the regular DWSRF program to include and prioritize provisional and partially funded projects. Section 371.39(c) ensures that these projects will abide by any applicable special capitalization grant requirements in case of mixed funding.

Sections 371.200 - 371.208.

The sections of Subchapter I use the phrase "capitalization grant" to refer to "special" capitalization grants. A special capitalization grant is "funded by special appropriation enacted by the United States Congress for any special purpose, including, but not limited to, to respond to emergency events or to implement an economic recovery program." The phrase "capitalization grant" has been amended to "special capitalization grant" throughout Subchapter I to more accurately distinguish these grants from the standard capitalization grants under the regular DWSRF program.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Amanda Lavin, Deputy Executive Administrator for Project Finance, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking.

PUBLIC BENEFITS AND COSTS.

Ms. Lavin has also determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking because it will improve the Board's ability to timely process special federal capitalization grants to implement infrastructure improvements for public water systems and will impose no new requirements on the public or persons required to comply with the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The Board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a re-

sult of enforcing this rulemaking. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The Board has determined that the promulgation and enforcement of these proposed rule amendments will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule amendments do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because these proposed rule amendments do not burden nor restrict or limit the owner's right to property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580.

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.20, 371.24, 371.25

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§371.20. *Intended Use Plan.*

(a) - (d) (No change.)

(e) Provisional projects or partially funded projects that are identified under §371.207(c) and (d) of this title (relating to Lending Rates) will receive priority consideration for financing under the intended use plan.

§371.24. *Disadvantaged Community Program through Loan Subsidies.*

(a) - (e) (No change.)

(f) Total Amount of Subsidies. For each fiscal year, the total amount of loan subsidies made by the board under this section and under §371.52 of this title (relating to Lending Rates) for provisional projects and partially funded projects may not exceed 30% of the amount of the capitalization grant received by the board for that year.

(g) (No change.)

§371.25. *Criteria and Methods for Distribution of Funds for Disadvantaged Communities.*

(a) The board will determine annually the amount of capitalization grant funds to be made available for projects for disadvantaged

communities and will include this information in the intended use plan, provided however that no more than 30% of the capitalization grant for that fiscal year can be [se] distributed for disadvantaged communities and provisional projects and partially funded projects under §371.52 of this title (relating to Lending Rates). Funds available may include funds made available for disadvantaged communities in prior years' intended use plans and disadvantaged communities' funds which have become de-obligated from prior obligations or commitments.

(b) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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SUBCHAPTER C. APPLICATION FOR ASSISTANCE

31 TAC §371.39

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§371.39. *Review of Applications by the Executive Administrator.*

(a) - (b) (No change.)

(c) The executive administrator shall ensure that applications for partially funded projects under §371.207(d) of this title (relating to Lending Rates) include any additional information necessary to comply with requirements for mixed funding applicable under a special capitalization grant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.52

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§371.52. Lending Rates.

(a) - (g) (No change.)

(h) Provisional projects and partially funded projects. Provisional projects and partially funded projects designated under §371.207(c) and (d) of this title (relating to Lending Rates) will receive a 0.0% interest rate. In addition to the 0.0% interest rate, disadvantaged community projects that also qualify as provisional projects or partially funded projects also may qualify for principal forgiveness under §371.24 of this title (relating to Disadvantaged Community Program through Loan Subsidies).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

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SUBCHAPTER I. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE UNDER SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§371.200 - 371.208

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§371.200. Purpose.

It is the purpose of this subchapter to specify flexibility in providing financial assistance made available under a special capitalization grant as necessary and appropriate to the terms of that special capitalization grant or the requirements of any special capitalization grant agreement to the greatest extent necessary. The provisions of this subchapter should be interpreted and applied in order to fully utilize the funds made available for the benefit of the state and its political subdivisions.

§371.201. Definitions.

In addition to the definitions at §371.2 of this title (relating to Definitions [Definition] of Terms), the following terms, when used in this subchapter, shall have the following meanings:

~~[(1) Capitalization grant--a capitalization grant funded by special appropriation by the United States Congress for any special~~

~~purpose, including but not limited to responding to emergency events and supporting economic recovery.]~~

~~(1) [(2)] Emergency event--A natural disaster such as a hurricane, tornado, significant flooding event, prolonged drought or other natural disaster or a man-made disaster, an act of terrorism or an enemy attack that results in damage to or impairment of a public water supply system.~~

~~(2) Partially funded project--A project above the special capitalization grant intended use plan funding line that cannot be fully funded due to the unavailability of special capitalization grant funds.~~

~~(3) Provisional project--A project in the special capitalization grant intended use plan that is listed below the funding line, and that is designated by the executive administrator as a project that may submit a complete application in anticipation of possible funding in the event one or more projects above the funding line fail to qualify for funding under the special capitalization grant.~~

~~(4) [(3)] Ready to proceed--A project has all of the approvals required in this chapter needed in order to commence construction.~~

~~(5) Special capitalization grant--A capitalization grant funded by special appropriation by the United States Congress for any special purpose, including but not limited to responding to emergency events and supporting economic recovery.~~

§371.202. Eligibility Requirements.

(a) - (b) (No change.)

(c) Specific eligibility requirements may be specified by the executive administrator consistent with the terms of the special capitalization grant.

§371.203. Intended Use Plan.

(a) The board shall prepare an intended use plan (IUP) in cooperation with Texas Commission on Environmental Quality (TCEQ) to meet the requirements of the special capitalization grant. The IUP will identify those projects anticipated to receive assistance from funds available under the special capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the special capitalization grant.

(b) (No change.)

(c) Subsequent to adoption of an IUP, the nature of a proposed project included in the IUP may change with written approval of the executive administrator consistent with the terms of the special capitalization grant. [;]

(d) - (e) (No change.)

(f) The executive administrator may revise the rating process established in §371.19 of this title (relating to Rating Process) for those applicants seeking an expedited review under this subchapter provided that this revised process is consistent with the special capitalization grant and is approved by the board.

~~(g) The executive administrator may at any time designate a project listed below the funding line in the special capitalization grant intended use plan as a provisional project.~~

§371.204. Applicable Rules.

(a) An application shall comply with the requirements of ~~[Chapter 371,]~~ Subchapters A - H of this chapter, except as otherwise provided in Subchapter I or specified by the executive administrator.

(b) In addition to requirements for applications incorporated under subsection (a) of this section, an application under this subchap-

ter shall include a brief description of the project including, but not limited to, the following:

(1) (No change.)

(2) that the project is consistent with the purposes of the special capitalization grant, as defined by terms of the special capitalization grant agreement and as determined by the board;

(3) (No change.)

(4) that the applicant will comply with Disadvantaged Business Enterprise "fair share" goals in procuring the project contractors and subcontractors unless expressly waived by the terms of the special capitalization grant;

(5) - (6) (No change.)

§371.205. *Expedited Review of the Applications by the Executive Administrator.*

The executive administrator will commence a review for administrative completeness as soon as practicable upon receipt of the application and may request any modifications or additional information to ensure consistency with the requirements of this subchapter and the terms of the special capitalization grant. The applicant shall respond to any request for modification or for additional information within the timeframe specified in the executive administrator's request. Once the application has been deemed to be administratively complete, the executive administrator will commence a technical review of the project to ensure that it is eligible for processing under this subchapter and that the project is feasible. When this technical review is complete, the application shall be scheduled for board consideration.

§371.206. *Formal Action by the Board.*

(a) - (b) (No change.)

(c) Commitment period. Loan approval action will specify the commitment period consistent with the terms of the special capitalization grant, after which time the commitment shall expire.

§371.207. *Lending Rates.*

(a) Procedure for setting interest rates.

(1) The executive administrator shall establish a procedure to set a lending rate for projects that is consistent with the terms of the special capitalization grant, to be considered by the board in approving the application.

(2) - (4) (No change.)

(b) The board, based on the procedure established by the executive administrator under subsection (a) of this section, will set interest rates for loans under this subchapter based upon costs of funds to the board, risk factors associated with managing the board's loan portfolio, market rate scales, and other factors consistent with the special capitalization grant.

(c) The executive administrator may place a provisional project on the intended use plan of a capitalization grant administered under Subchapters A - H of this chapter.

(d) The executive administrator may place a partially funded project on the intended use plan of a capitalization grant administered under Subchapters A - H of this chapter.

§371.208. *Waiver of Rules.*

(a) Any of the provisions of this subchapter may be waived or modified by the executive administrator as necessary and appropriate to implement the terms of the special capitalization grant or to comply with the requirements of the special capitalization grant agreement.

(b) The board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the special capitalization grant or to comply with the requirements of the special capitalization grant agreement prior to approving an application for financial assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) proposes amendments to Chapter 375, §375.16, concerning Rating Process, §375.38, concerning Review of Applications by the Executive Administrator, §375.52, concerning Lending Rates, §§375.400 - 375.404 and §§375.406 - 375.408, concerning Applications for Financial Assistance Filed in Response to Special Capitalization Grants.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE AMENDMENTS.

The American Recovery and Reinvestment Act of 2009 ("ARRA") provides funding under a strict time constraint. Any funded project that is not "under contract or construction" prior to February 17, 2010 will have its funding revoked and reallocated to other states. Accordingly, the Board proposes changes to the rules governing the Clean Water State Revolving Fund (CWSRF) to better ensure that all projects listed above the ARRA CWSRF intended use plan ("IUP") funding line will be able to commence construction or be under contract by the February deadline. It is in the state's interest to ensure that provisional unlisted projects are standing by in the event it becomes clear a listed project will not meet the strict deadline. In that instance, a listed project would be de-listed, and a "ready" unlisted provisional project will be substituted, in order to ensure that Texas does not lose federal funding. To encourage prospective applicants to prepare a provisional application, a zero-percent interest loan will be made available to applicants who undertake the time and expense to prepare a "ready to proceed" application but subsequently fail to qualify for ARRA CWSRF funding.

In addition to provisional projects, some projects will rest "on the funding line" whereby there are insufficient funds in the federal grant to cover the entire project. It is in the state's interest to ensure that all funds in the federal grant are used, and for applicants whose projects fall "on the funding line," the state will first calculate the total amount of additional funds necessary to fund all projects on the funding line, and then redistribute ARRA funds from those projects that have 0.0% ARRA loan fund allocations to those that have ARRA grant fund allocations in order to fully fund all ARRA projects eligible for grants. Then the amount necessary to fund the resulting revised ARRA loan funds for those

projects on the funding line will be supplemented with FY2010 CWSRF funds. The total amount of 2010 CWSRF and DWSRF funds necessary will equal the original total of the portions of projects on the funding line that were in excess of the original ARRA allocations.

PROPOSED AMENDED RULES IN CHAPTER 375.

Sections 375.16, 375.38, 375.52, 375.401, 375.403, and 375.407.

The amendments to §§375.16(h), 375.38(c), 375.52(f), 375.401, 375.403(g), and 375.407(c) and (d), allow the executive administrator to designate projects for 0.0% interest loans in two circumstances. First, the amended rules allow the executive administrator to designate a project as "provisional". In the context of the CWSRF ARRA stimulus grant, the Board proposes to have alternative projects ("provisional projects") standing by and ready to proceed in the event it becomes clear that a project listed above the ARRA IUP funding line cannot make the strict time constraints of the federal stimulus bill. Applicants whose projects are listed as provisional are asked to prepare applications in anticipation of being selected to replace a project that fails to proceed in timely fashion. The rules provide that applicants that are invited to prepare "ready to proceed" applications but subsequently are not invited to apply for special capitalization grant funding will receive invitations to apply for 0.0% interest loans from the CWSRF program with priority consideration.

Second, the amended rules allow the executive administrator to provide priority consideration under the program for projects that fall on the special capitalization grant funding line. When the special capitalization grant funds reach their limit, and a project is left with only partial funding, the amended rules permit the executive administrator to give priority consideration to those applicants to fund the remaining portion of their project with a 0.0% interest loan from the base CWSRF program following a redistribution of funds within the ARRA allocations in order to fully fund those projects eligible for ARRA grants.

Provisional projects and partially funded projects are defined in §375.401. The executive administrator is given authority to designate a project as such under §375.403(g). The executive administrator is given authority to add these projects to the regular CWSRF program intended use plan under §375.407(c) and (d). Section 375.16(h) and §375.52(f) amend the rules for the regular CWSRF base program to include and prioritize provisional and partially funded projects. Section 375.38(c) ensures that these projects will abide by any applicable special capitalization grant requirements.

Sections 375.400 - 375.404 and 375.406 - 375.408.

The sections of Subchapter D use the phrase "capitalization grant" to refer to "special" capitalization grants. A special capitalization grant is "funded by special appropriation enacted by the United States Congress for any special purpose, including, but not limited to, to respond to emergency events or to implement an economic recovery program." The phrase "capitalization grant" has been amended to "special capitalization grant" throughout Subchapter D to more accurately distinguish these grants from the standard capitalization grants under the regular CWSRF program.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Amanda Lavin, Deputy Executive Administrator for Project Finance, has determined that there will be no fiscal implications

for state or local governments as a result of the proposed rulemaking.

PUBLIC BENEFITS AND COSTS.

Ms. Lavin has also determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking because it will improve the Board's ability to timely process special federal capitalization grants to implement infrastructure improvements that better protect water quality and will impose no new requirements on the public or persons required to comply with the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The Board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The Board has determined that the promulgation and enforcement of these proposed rule amendments will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule amendments do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because these proposed rule amendments do not burden nor restrict or limit the owner's right to property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 463-5580.

SUBCHAPTER A. GENERAL PROVISIONS DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.16

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§375.16. *Rating Process.*

(a) - (g) (No change.)

(h) Provisional projects or partially funded projects that are designated under §375.407(c) and (d) of this title (relating to Lending Rates) will receive priority consideration for a 0.0% interest loan under the intended use plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

General Counsel

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DIVISION 3. APPLICATIONS FOR ASSISTANCE

31 TAC §375.38

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§375.38. *Review of Applications by the Executive Administrator.*

(a) - (b) (No change.)

(c) The executive administrator shall ensure that applications for partially funded projects designated under §375.407(d) of this title (relating to Lending Rates) include any additional information necessary to comply with requirements for mixed funding applicable under a special capitalization grant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §375.52

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§375.52. *Lending Rates.*

(a) - (e) (No change.)

(f) Provisional projects and partially funded projects. Provisional projects and partially funded projects that are designated under §375.407(c) and (d) of this title (relating to Lending Rates) will receive a 0.0% interest rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE FILED IN RESPONSE TO SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§375.400 - 375.404, 375.406 - 375.408

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the Board.

Cross reference to statute: Texas Water Code Chapters 15, 16, and 17.

§375.400. *Purpose.*

It is the purpose of this subchapter to specify flexibility in providing financial assistance made available under a special capitalization grant as necessary and appropriate to the terms of that special capitalization grant or the requirements of any special capitalization grant agreement to the greatest extent necessary. The provisions of this subchapter should be interpreted and applied in order to fully utilize the funds made available for the benefit of the state and its political subdivisions.

§375.401. *Definitions.*

In addition to the definitions at §375.2 of this chapter (relating to Definitions of Terms), the following terms, when used in this subchapter, shall have the following meanings:

[(1)] Capitalization grant--A capitalization grant funded by special appropriation enacted by the United States Congress for any special purpose, including, but not limited to, to respond to emergency events or to implement an economic recovery program.]

(1) [(2)] Emergency event--A natural disaster such as a hurricane, tornado, significant flooding event, prolonged drought, earthquake or other natural disaster or man-made disaster such as an act of

terrorism or an enemy attack that results in damage to or impairment of a publicly-owned wastewater collection, distribution and treatment system.

(2) Partially funded project--A project above the special capitalization grant intended use plan funding line that cannot be fully funded due to the unavailability of special capitalization grant funds.

(3) Provisional project--A project in the special capitalization grant intended use plan that is listed below the funding line, and that is designated by the executive administrator as a project that may submit a complete application in anticipation of possible funding in the event one or more projects above the funding line fail to qualify for funding under the special capitalization grant.

(4) [(3)] Ready to proceed--A project that has all of the approvals required in this chapter needed in order to commence construction.

(5) Special capitalization grant--A capitalization grant funded by special appropriation enacted by the United States Congress for any special purpose, including, but not limited to, to respond to emergency events or to implement an economic recovery program.

§375.402. *Eligibility Requirements.*

(a) - (b) (No change.)

(c) Specific eligibility requirements may be specified by the executive administrator consistent with the terms of the special capitalization grant.

§375.403. *Intended Use Plan.*

(a) The board shall prepare an intended use plan to meet the requirements of the special capitalization grant. The intended use plan (IUP) will identify those projects anticipated to receive assistance from funds available under the special capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the special capitalization grant.

(b) (No change.)

(c) Subsequent to adoption of an intended use plan, the nature of a proposed project included in the intended use plan may change with written approval of the executive administrator consistent with the terms of the special capitalization grant.

(d) - (f) (No change.)

(g) The executive administrator may at any time designate a project listed below the funding line in the special capitalization grant intended use plan as a provisional project.

§375.404. *Applicable Rules.*

(a) (No change.)

(b) In addition to requirements for applications incorporated under subsection (a) of this section, an application under this subchapter shall include a brief description of the project including, but not limited to, the following:

(1) (No change.)

(2) that the project is consistent with the purposes of the special capitalization grant, as defined by terms of the special capitalization grant agreement and as determined by the board;

(3) (No change.)

(4) that the applicant will comply with Disadvantaged Business Enterprise "fair share" goals in procuring the project contractors and subcontractors unless expressly waived by the terms of the special capitalization grant;

(5) - (6) (No change.)

§375.406. *Formal Action by the Board.*

(a) - (b) (No change.)

(c) Commitment period. Loan approval action will specify the commitment period consistent with the terms of the special capitalization grant, after which time the commitment shall expire.

§375.407. *Lending Rates.*

(a) Procedure for setting interest rates.

(1) The executive administrator shall establish a procedure to set a lending rate for projects that is consistent with the terms of the special capitalization grant, to be considered by the board in approving the application.

(2) - (4) (No change.)

(b) The board, based on the procedure established by the executive administrator under subsection (a) of this section, will set interest rates for loans under this subchapter based upon costs of funds to the board, risk factors associated with managing the board's loan portfolio, market rate scales, and other factors consistent with the special capitalization grant.

(c) The executive administrator may place a provisional project on the intended use plan of a capitalization grant administered under Subchapters A, B, and C of this chapter.

(d) The executive administrator may place a partially funded project on the intended use plan of a capitalization grant administered under Subchapters A, B, and C of this chapter.

§375.408. *Waiver of Rules.*

(a) Any of the provisions of this subchapter may be waived or modified by the executive administrator as necessary and appropriate to implement the terms of the special capitalization grant or to comply with the requirements of the special capitalization grant agreement.

(b) The board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the special capitalization grant or to comply with the requirements of the special capitalization grant agreement prior to approving an application for financial assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-8061



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 529. FLOOD CONTROL SUBCHAPTER A. OPERATION AND MAINTENANCE GRANT PROGRAM

31 TAC §§529.1 - 529.8

The Texas State Soil and Water Conservation Board (State Board or agency) proposes new Chapter 529, Flood Control, to include new §§529.1 - 529.8, concerning the administration of a state-funded grant program to assist soil and water conservation districts in performing operation and maintenance of flood control dams.

Nearly 2,000 floodwater retarding structures, or dams, have been built over the last 60 years within the State of Texas. The primary purpose of the structures is to protect lives and property by reducing the velocity of floodwaters, and thereby releasing flows at a safer rate. These are earthen dams that exist on private property, and were designed and constructed by the United States Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS). They were built with the understanding that the private property owner would provide the land, the federal government would provide the technical design expertise and the funding to construct them, and then units of local government would be responsible for maintaining them into the future.

Local sponsors of the dams were required before a federal project was begun. Local sponsors signed a watershed agreement which outlined the duties and responsibilities of the federal and local sponsors. In general, local sponsors are required to obtain and enforce easements, conduct operation and maintenance (O&M) inspections, maintain the structures, and implement land treatment measures in the watershed. Soil and water conservation districts (SWCD) are one of the local sponsors in all watershed projects. Other local sponsors include counties, cities, and Water Control and Improvement Districts (WCIDs).

Due to the passage of time and difficulty in raising adequate funds locally, many SWCDs and other sponsors approached the State Board and expressed their concerns over the amount of needed O&M on flood control dams. In recognition that these dams will continue to serve as a critical protection for our state's infrastructure, private property, and lives, the State Board proposes a grant program to assist local SWCDs and other sponsors in carrying out their responsibilities regarding O&M with funding appropriated by the Texas Legislature for the 2010-2011 biennium. Proposed new §529.1, Statutory Authority and Policy Statement, would explain the agency's intent and authority for administering an O&M Grant Program through local SWCDs.

Proposed new §529.2, Definitions, would provide a list of terms and their definitions for the purposes of new Chapter 529.

Proposed new §529.3, Administration of Funds, would establish general fiscal provisions that would apply to the program, explain the program's sources of funding, establish provisions for the allocation reimbursement of funds to local SWCDs, identify which activities would be eligible for reimbursement, establish that the program would require a 10-percent non-state funded matching provision, establish and characterize the types of "in-kind" contributions that may be used to satisfy the 10-percent non-state match requirement, and allow for the reimbursement of local SWCD administrative costs.

Proposed new §529.4, Applicability, would establish that only eligible SWCDs will be provided an allocation of funding for performing O&M activities, but would provide a mechanism that allows for other local sponsors of flood control dams to receive an eligible SWCD's allocation if the SWCD provides a written request to transfer the allocation.

Proposed new §529.5, Allocation of Funds, would establish the criteria under which the State Board would make funding allocations, explain that prioritization of O&M activities would be conducted by local sponsors, explain that the State Board will notify eligible SWCDs of funding allocations in writing, establish that the State Board would adjust allocations within a fiscal year based on needs and the availability of funds, establish that allocations are effective for a fixed period of time within a fiscal year, explain that the State Board may execute a contract with an eligible SWCD for the performance of O&M activities, and provide for the allocation of funding to eligible SWCDs to address emergency situations.

Proposed new §529.6, Solicitation of Bids by Eligible SWCDs, would establish that bids are required for SWCD purchases that exceed \$50,000 in accordance with provisions of §271.024 of the Local Government Code.

Proposed new §529.7, Reimbursements and Reporting Non-State Funded Match, would require that requests for reimbursement must be submitted on forms provided by the State Board, O&M agreements between local sponsors, as defined by §529.2, must exist and be submitted to the State Board prior to reimbursement, establish the conditions under which the State Board would consider making payment, require that in-kind contributions be reported on reimbursement requests, establish that the program is only a reimbursement based program, and that the State Board may allow for the purchasing of easements at their discretion. Proposed new §529.7 would also establish that eligible SWCDs must certify that the activities that are requested to be reimbursed were performed to the SWCD's satisfaction prior to submitting the request to the State Board.

Proposed new §529.8, Technical Standards for O&M Activities, would establish that the State Board may adopt technical standards for certain O&M activities which must be attained in order for reimbursement to be approved.

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering these new rules. The local match required to receive funds under this program represent local monies already being raised locally and used for O&M activities and participation is voluntary.

Mr. Kenny Zajicek has also determined that for the first five year period these new rules are in effect, the public benefit anticipated as a result of administering these new rules will be an understanding of the administrative requirements associated with grant funds available through the State Board for performing O&M activities.

There is no anticipated cost to small businesses or individuals resulting from these amended rules.

Comments on the proposed new rules may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, ext. 231.

The new rules are proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§529.1. Statutory Authority and Policy Statement.

Pursuant to 201.001(d), Agriculture Code, the State Soil and Water Conservation Board is designated by the Texas Legislature as the state agency responsible for conserving soil and related resources of this state. Within this context, the State Board is charged with controlling and preventing soil erosion, controlling floods, preventing the impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, and thereby protecting and promoting the health, safety, and general welfare of the people of this state. Consistent with this authority, it is the policy of the State Soil and Water Conservation Board to administer a grant program through local soil and water conservation districts that provides financial assistance for operation and maintenance activities on United States Department of Agriculture - Natural Resources Conservation Service assisted flood control dams. In accordance with this purpose, §§529.1 - 529.8 of this title (relating to Operation and Maintenance Grant Program) are adopted.

§529.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

(1) Allocation--An amount of funding for a fiscal year specified and withheld by the State Board for an eligible soil and water conservation district for the reimbursement of operation and maintenance activities on flood control dams.

(2) Biennium--The period of time beginning September 1 of every odd numbered year and ending on August 31 twenty-four months later; a biennium includes two fiscal years as defined by this subchapter.

(3) Eligible soil and water conservation district (SWCD)--An SWCD that is listed as a sponsor on an O&M agreement for a watershed project.

(4) Fiscal year--The 12-month period of time beginning September 1 of a year and ending on August 31 of the following year.

(5) Flood control dam--Floodwater retarding structures, also commonly referred to as flood control structures, watershed structures, flood prevention or "FP" sites, and certain grade stabilization structures included in the National Inventory of Dams built by the federal government under one of the four following federal authorizations:

(A) Public Law 534 - Flood Control Act of 1944 (78th U.S. Congress),

(B) the Pilot Watershed Program approved by Congress in 1953,

(C) Public Law 566 approved by Congress in 1954 and amended by Public Law 1018 in 1956, and

(D) the Agriculture and Food Act of 1981 (Resource Conservation and Development, or RC&D).

(6) In-kind match--Non-monetary contributions of services, equipment, or other items of value reported to the State Board by eligible SWCDs for the purpose of satisfying all or a portion of a non-state funded matching requirement for reimbursement of an O&M activity. In-kind match may not be qualified if the source is contributing the in-kind match because it was enabled to do so directly through state appropriations.

(7) National Inventory of Dams--The U.S. Army Corps of Engineers' list of dams first authorized by the National Dam Inspection Act (Public Law 92-367) of 1972.

(8) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service.

(9) Operation and maintenance (O&M)--The act of performing a specific set of activities associated with maintaining optimal physical conditions and functioning of a flood control dam. O&M is not an activity defined as structural repair. The State Board may adopt technical standards, as defined by this subchapter, for certain O&M activities which must be met prior to reimbursement being approved. Specific O&M activities include:

(A) removal of woody brush or other undesirable vegetation from dam embankments, spillways, and plunge basins,

(B) fence and/or gate installation to prevent the grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins,

(C) fence and/or gate repair to prevent the grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins,

(D) fence and/or gate removal for the purpose of installing new fencing and/or gate(s) to prevent grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins,

(E) establishment of desirable vegetation, including the fertilization of existing desirable vegetation, intended to stabilize the surface of dam embankments and spillways,

(F) repairing soil erosion damage on dam embankments and spillways resulting from lack of vegetative cover,

(G) clearing debris from principal and auxiliary spillway inlets,

(H) maintenance of and/or replacement of valves and trash guards,

(I) replacement of gate valve and stem on principal spillway,

(J) minor earth shaping and establishment of vegetation to repair a slope slide on a dam embankment,

(K) repair of wave erosion requiring minor earthwork and establishment of vegetation,

(L) repair of minor erosion from livestock and wildlife trailing on dam embankments or spillways,

(M) repair of erosion from vehicles on dam embankments or spillways,

(N) replacement of deteriorated corrugated metal pipe ends (tail pipes),

(O) repair of erosion in auxiliary (emergency) spillway from minor storm damage or livestock/wildlife trailing,

(P) any other activity approved by the State Board at their discretion if it is not defined as structural repair in this chapter; activities in this category must be approved by the State Board prior to performance of the activity to ensure reimbursement.

(10) O&M agreement--A written agreement pertaining to a specific flood control dam or dams within a watershed project, taking into consideration the powers and jurisdictional boundaries of sponsors, that specifies each sponsors' responsibilities for financing and performing O&M inspections and activities.

(11) O&M technical standard--An established norm or requirement in the form of a formal document establishing uniform engineering or technical criteria, methods, processes, and/or practices adopted by the State Board for a specific O&M activity. O&M activities for which the State Board has adopted an O&M technical standard must be performed in accordance with the technical standard prior to reimbursement being made.

(12) Reimbursement request--A request for reimbursement of a percentage of the costs associated with the performance of O&M activities.

(13) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(14) Sponsor--Any entity or individual that is a signatory to a watershed project plan, watershed agreement, or O&M agreement.

(15) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(16) Texas Commission on Environmental Quality--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(17) Watershed agreement--A legal document that records the responsibilities of the sponsors and NRCS for implementing a watershed project plan relating to contributions of funding, the acquisition of land rights, construction, O&M, project administration, management of affected lands, as well as responsibilities regarding permitting and water and mineral rights.

(18) Watershed project--A geographic area delineated by the boundaries of a watershed within which a series of flood control dams have been constructed or are planned to be constructed by NRCS to prevent and/or minimize floodwater damage to lives and property.

(19) Watershed project plan--A plan developed by local sponsors with the assistance of NRCS for a watershed project that includes descriptions of the watershed, problems to be addressed, works of improvement to be installed, costs of installed works, project benefits, cost-benefit analyses, financing information, and general requirements for O&M.

§529.3. Administration of Funds.

(a) General Fiscal Provisions. Eligible SWCDs must comply with any applicable provisions within the *Manual of Fiscal Operations for Soil and Water Conservation Districts* at all times. The *Manual of Fiscal Operations for Soil and Water Conservation Districts* is approved and periodically amended by the State Board and is available on the State Board's website; hardcopies of this manual may be requested from the State Board.

(b) Sources of funding. Any funding available for O&M grants during a fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. The amount of funding available for O&M grants will be determined by the State Board for a fiscal year. Other sources of funding may be used for O&M grants by the State Board if applicable and when available. Funds will be allocated by the State Board to eligible SWCDs for use during the fiscal year for which the funds were appropriated, unless the State Board has executed a contract with an eligible SWCD that allows for liquidation of the obligated amount over a period of time that extends beyond the fiscal year.

(c) Allocation and reimbursement. Funds will be administered through an allocation and reimbursement process as specified in §529.5 and §529.7 of this subchapter.

(d) Activities eligible for reimbursement. Funds may only be used to reimburse eligible SWCDs and subcontractors of their choosing for costs associated with the performance of O&M activities as defined by this subchapter on flood control dams. Eligible SWCDs desiring reimbursement of any activity not specifically listed as an O&M activity in §529.2(9) of this subchapter must contact the State Board prior to initiating the activity for approval. Other activities for which the State Board may reimburse eligible SWCDs and subcontractors include the purchasing of pesticides by the eligible SWCD for use by the SWCD or a subcontractor during the course of carrying out an O&M activity, the purchasing of easements, the administrative costs of eligible SWCDs associated with O&M activities, and any other O&M-related activities that are approved by the State Board at their discretion.

(e) Non-state funded matching requirement. All O&M reimbursement requests will be paid by the State Board at 90-percent of the total reimbursement request amount. Ten (10) percent of the total reimbursement request amount must be paid through funds not originating from state appropriations. Reimbursement requests for O&M activities may be paid by the State Board up to 100-percent if the flood control dam on which the activities were performed is a part of a watershed project that did not include an O&M agreement with at least one sponsor empowered by the State of Texas to levy taxes on June 19, 2009.

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be reported to the State Board on a reimbursement request form at the time the form is submitted to the State Board. In-kind match performed prior to the start of the current biennium is not eligible for use as non-state funded match. In-kind match reported in excess of the required amount for a single reimbursement request may be recorded by the State Board for use by eligible SWCDs on future reimbursement requests within the current biennium. In-kind match may not be carried forward into a new biennium. All aspects of reimbursement requests, including the legitimacy of reported in-kind match, are subject to review and approval by the State Board. In-kind match will be reported at rates approved by the State Board.

(g) Standardized rates for in-kind contributions of O&M activities. A standardized set of rates for certain O&M activities will be adopted by the State Board for use in determining the value of in-kind contributions. Standardized rates adopted by the State Board will be made available to eligible SWCDs upon notification of allocation.

(h) Administrative costs of eligible SWCDs. Eligible SWCDs may request a payment for compensation of their administrative costs in an amount not to exceed five (5) percent of the reimbursed amount. Payments for administrative costs must be reported on a reimbursement request at the time of its submission to the State Board.

(i) Utilizing O&M grant funds for structural repair on flood control dams. The State Board, at their discretion, may consider approving the use of O&M funds for structural repair. All requests to use O&M grant funds for structural repair must specify the type of structural repair intended to be performed and must be submitted in writing to the State Board. All requests to use O&M grant funds for structural repair are subject to review and approval by the State Board. Copies of quotations and bid documents must be provided to the State Board upon request. If concurrence from the NRCS and/or TCEQ must be obtained for the specific repair activity, such concurrence must be obtained and provided in writing to the State Board prior to submitting the request for the use of O&M grant funds for structural repair.

§529.4. Applicability.

(a) Allocations of O&M grant funding will be made only to eligible SWCDs.

(b) Allocations transferred to other sponsors. In cases where the eligible SWCD desires for the State Board to contract directly with another sponsor listed on the O&M agreement for work on flood control dams within the same watershed project, the eligible SWCD must submit a written request to the State Board. Any written agreements providing allowance for one SWCD to perform O&M activities within the boundaries of another SWCD must be submitted to the State Board with the written request. All requests to make allocations to non-SWCD sponsors are subject to review and approval by the State Board. Upon approval, the State Board will notify the eligible SWCD and the other sponsor of the allocation transfer.

§529.5. Allocation of Funds.

(a) Allocation criteria. When available, the most recent statewide survey of O&M needs and cost-estimates performed by the NRCS may be used by the State Board as a basis for making allocations to eligible SWCDs. The State Board may solicit allocation requests directly from eligible SWCDs.

(b) Prioritization of O&M activities. Eligible SWCDs and other sponsors are responsible for prioritizing the scheduling and performance of O&M activities within the scope of a watershed project.

(c) Notification. Notification of allocations will be provided to eligible SWCDs in writing by the State Board.

(d) Reallocation and efficiency. The State Board may adjust allocations within a fiscal year as eligible SWCD needs and the availability funds change in order to achieve the most efficient use of O&M grant funds. Changes in allocation amounts will be made through consultation with any eligible SWCDs whose allocation amount is affected because of the change, and notification of changes will be provided to affected SWCDs in writing.

(e) Effective dates of allocations. Allocations are approved by the State Board for an effective period of time within the fiscal year for which the funds were appropriated. The effective period for an allocation is determined by the State Board and is provided to eligible SWCDs in writing upon notification.

(f) Contracting. When necessary, the State Board may contract with an eligible SWCD for the performance of O&M activities.

(g) Emergency allocations. The State Board may allocate additional funds to any eligible SWCD for a specific O&M activity or activities in the event that immediate action is necessary to protect human health and safety.

§529.6. Solicitation of Bids by Eligible SWCDs.

Solicitation of bids will be required for purchases more than \$50,000 in accordance with provisions of §271.024 of the Local Government Code.

§529.7. Reimbursements and Reporting Non-State Funded Match.

(a) Reimbursement requests. Reimbursement requests for O&M activities are subject to approval by the State Board and must be submitted on forms provided by the State Board.

(b) O&M agreements required.

(1) An O&M agreement must be filed with the State Board at all times for reimbursement of O&M activities. If any amendment is made to an O&M agreement on file with the State Board, the amended O&M agreement must be submitted to the State Board prior to receiving reimbursement of a request for O&M activities performed under

the amended agreement. Failure to submit amended O&M agreements may result in reimbursement requests not being approved by the State Board.

(2) If any sponsor to an O&M agreement determines that the agreement has expired or is otherwise legally invalid so that participation in this program is prohibited or not feasible, then the participating sponsors shall immediately notify the State Board. The participating sponsors shall submit a new O&M agreement within six months of notification to the State Board.

(c) Payment. Upon satisfactory receipt of a reimbursement request, signature of certification, and other required documentation, the State Board shall cause payment to be issued. Payment for a specific O&M activity may not be made until the activity is completed in its entirety for the flood control dam. All needed O&M activities do not need to be completed prior to reimbursement for a single O&M activity on a flood control dam.

(d) In-kind contributions. In-kind contributions intended to satisfy a non-state funded match requirement must be reported on the reimbursement request form at rates approved by the State Board.

(e) Reimbursement only. Payment will be made on a reimbursement basis only. State money may not be provided in advance.

(f) Purchasing easements. Reimbursement of the purchasing of easements for the purposes of performing O&M activities may be approved by the State Board at their discretion. All requests to use O&M grant funds for the purchasing of easements must be approved by the State Board prior to the purchase.

(g) Certification. Reimbursement requests must be approved by an official act of the SWCD and be certified with the signature of the SWCD chairman. Certification of a reimbursement request means the O&M activities listed on the request have been performed to the satisfaction of the SWCD and represents authorization for the State Board to consider causing payment to the contractor identified on the reimbursement request. An eligible SWCD may conduct a vote during an official SWCD meeting to designate a different director or directors of the SWCD other than the chairman to certify by signature on behalf of the SWCD outside of an official SWCD meeting. Designation of an alternate SWCD director or directors for purposes of certifying a reimbursement request must be noted in the official minutes of the SWCD meeting. If the reimbursement request includes O&M activities for which the State Board has adopted a technical standard, an employee of the State Board or the NRCS must certify by signature on the reimbursement request that the O&M activity was performed in accordance with the applicable technical standard prior to the reimbursement request being submitted to the State Board.

§529.8. Technical Standards for O&M Activities.

Technical standards may be adopted by the State Board for certain O&M activities. Technical standards adopted by the State Board will be made available to eligible SWCDs upon notification of allocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

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For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 12. ECONOMIC GROWTH

The Comptroller of Public Accounts proposes new Chapter 12, concerning Economic Growth, to provide the procedures for creating advisory committees on economic growth and endangered species act compliance. New Chapter 12 is necessary to implement Senate Bill 2534, 81st Legislature, 2009, authorizing the comptroller to create advisory boards as deemed necessary to assist the new Interagency Task Force on Economic Growth and Endangered Species. The new rules will be published as Texas Administrative Code, Title 34, Part 1, Chapter 12, new Subchapter A, §12.1, concerning General Definitions; and Subchapter B, §§12.51 - 12.54, concerning Definitions, Advisory Board Creation, Purpose and Composition, Meetings and General Advisory Board Responsibilities. Senate Bill 2534, 81st Legislature, 2009, declares as its purpose to establish mechanisms for state agencies to assist local communities engaged in economic development activities to comply with endangered species laws and regulations. It creates a task force of state agencies with experience in supporting economic growth and compliance with endangered species laws and regulations. Further, it authorizes the comptroller to create advisory committees to advise the task force regarding the economic development issues that specifically relate to local communities in their efforts to comply with endangered species laws and regulations.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the new chapter will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the new chapter would benefit the public by clarifying the comptroller's procedures for implementing Senate Bill 2534, 81st Legislature, 2009. The proposed chapter would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed chapter.

Comments on the proposals may be submitted to Cary Dupuy, Natural Resource Policy Advisor, Natural Resources Policy Division, at cary.dupuy@cpa.state.tx.us or at P.O. Box 13528 Austin, Texas 78711.

SUBCHAPTER A. GENERAL DEFINITIONS

34 TAC §12.1

The new subchapter is authorized under Government Code, §2110.005, which provides that a state agency that creates an advisory committee shall adopt rules related to state the purpose and tasks of the committee and that describe the reporting requirements of the committee.

The new subchapter implements Government Code, §490E.005, which authorizes the comptroller to establish advisory committees to assist the task force on economic growth and endangered species in its work.

§12.1. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Comptroller" means the Comptroller of Public Accounts, and any division or entity within the Office of the Comptroller or managed by the comptroller.

(2) "Person" means an individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Staff" means employees of the comptroller selected by the comptroller to serve on behalf of the comptroller or assist in the performance of duties delegated to the comptroller.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

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SUBCHAPTER B. ADVISORY COMMITTEES

34 TAC §§12.51 - 12.54

The new subchapter is authorized under Government Code, §2110.005, which provides that a state agency that creates an advisory committee shall adopt rules related to state the purpose and tasks of the committee and that describe the reporting requirements of the committee.

The new subchapter implements Government Code, §490E.005, which authorizes the comptroller to establish advisory committees to assist the task force on economic growth and endangered species in its work.

§12.51. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Act" means Government Code, Chapter 490E, as adopted by Senate Bill 2534, 81st Legislature, 2009.

(2) "Advisory committee" means an advisory committee created pursuant to the Act.

(3) "Representatives of affected landowners" means a person:

(A) that owns a significant interest in real property within the geographic area that is the focus of the advisory committee;

(B) an individual designated as a representative by a person identified in subparagraph (A) of this paragraph; or

(C) an individual or individuals designated by an association or organization that is known to represent the interests of persons identified in subparagraph (A) of this paragraph.

(4) "Representatives of conservation interests" means individuals with a significant interest in the preservation of natural resources within the geographic area that is the focus of the advisory committee.

(5) "Representatives of municipalities or other affected jurisdictions" means individuals identified with or designated by municipalities or other governmental entities any part of which is within or contiguous to the geographic area that is the focus of the advisory committee.

(6) "Task Force" means the interagency task force on economic growth and endangered species created under the Act.

§12.52. Advisory Board Creation, Purpose and Composition.

(a) With the advice of the task force, the comptroller may create advisory committees to assist the task force with its work. The comptroller may prepare and provide to the task force an advisory committee framework statement that identifies:

- (1) the purpose and task of the advisory committee;
 - (2) the geographic area which will be the focus of an advisory committee;
 - (3) proposed members to the advisory committee in accord with subsection (b) of this section, identifying one of such members to serve as interim presiding officer;
 - (4) the method and time for the advisory committee to submit its recommendations to the comptroller and task force;
 - (5) timelines for the completion of work of the committee;
- and
- (6) any other matter that the comptroller determines to be necessary or appropriate.

(b) The comptroller shall propose members for the advisory committee that provide the balance necessary to address economic, environmental, and policy issues related to the specific issue or action under consideration by selecting of the total number of committee members:

- (1) one-third of the members to be representatives of affected landowners;
- (2) one-third of the members to be representatives of conservation interests; and
- (3) one-third of the members to be representatives of municipalities or other affected jurisdictions.

(c) The comptroller may prepare an advisory committee framework with such amendments as deemed appropriate and send the framework to each selected committee member as an appointment to serve on the committee. The comptroller may amend the advisory committee framework at any time.

(d) In the event of a permanent vacancy occurring on the committee at any time, the comptroller may appoint a replacement consistent with subsection (b) of this section.

§12.53. Meetings.

(a) The advisory committee is required to meet as often as necessary to complete the work of the committee.

(b) Meetings shall be called by the advisory committee's presiding officer.

(c) Meetings shall be subject to the requirements of the Open Meetings Act.

§12.54. General Advisory Board Responsibilities.

(a) An advisory committee shall provide advice and recommendations to the task force by identifying cost-efficient and effective recommendations for economic development and Endangered Species Act compliance in the geographic area designated in its framework.

(b) An advisory committee may provide advice and recommendations to the task force regarding such other matters as designated in its framework.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.9

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 421, Standards for Certification; §421.9, concerning Designation of Fire Protection Duties. The purpose of the proposed amendment is to make grammatical corrections to the word "Commission". The proposed amendment also reflects the name change of a form that is required to be filed when an individual is no longer appointed fire suppression duties. When an employee is hired by a fire department they are required to submit a Notice of Appointment prior to assigning them to fire suppression duties. When the employee is no longer assigned fire suppression duties for that jurisdiction they must submit a Removal from Appointment form showing that they are no longer with that fire department.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect the public benefit will be that the administrative staff of a fire department will have a clearer understanding of what they have to report to the Commission when an individual leaves their department. This form will enable the Commission to track this fire fighter if they transfer to another department, retire or pass on. There will be no effect to individuals required to comply with these amendments as proposed. There will be no effect on small or micro businesses.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulation and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.0322, Categories and Designation of Persons Performing Fire Protection Duties.

§421.9. Designation of Fire Protection Duties.

(a) (No change.)

(b) A fire department regulated by the Commission [~~commission~~] may not designate the same person under more than one category under this section. The designation shall be made on the records of the department and the designation shall be made available for inspection by the Commission [~~commission~~] or sent to the Commission [~~commission~~] on request.

(c) A fire department regulated by the Commission [~~commission~~] shall submit on the proper form a request to appoint fire protection personnel or part-time fire protection employees to a regulated discipline. No individual may be appointed to a discipline without approval by the Commission [~~commission~~]. Termination of fire protection personnel or part-time fire protection employees shall be reported to the Commission [~~commission~~] on the Removal from Appointment [~~proper~~] form within 14 calendar days of the action. In the case of termination, the employing entity shall report an individual's last known home address to the Commission [~~commission~~]. A Removal from Appointment form [~~Notice of Termination~~] may be submitted without the employee's signature.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200902940

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3838



CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 429, Minimum Standards for Fire Inspectors, Subchapter B, Minimum Standards for Fire Inspector Certification, §429.203, concerning Minimum Standards for Basic Fire Inspector Certification--New Track. The purpose of the proposed amendment is to correct a typographical error. The word "Investigations" was inadvertently typed in the original submission. It should read "Inspections".

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will clarify the requirements for the Inspector certification. There will be no effect to individuals required to comply with the amendment as proposed. There will be no effect on small or micro businesses.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, Subchapter B, Regulation and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code, §419.028, Training Programs and Instructors.

§429.203. Minimum Standards for Basic Fire Inspector Certification--New Track.

In order to be certified as a basic fire inspector, an individual must:

(1) (No change.)

(2) complete a Commission-approved Basic Fire Inspector program and successfully pass the Commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) - (B) (No change.)

(C) successful completion of the following college courses:

(i) (No change.)

(ii) Fire Prevention, three semester hours; or Fire Prevention Codes and Inspections [~~Investigations~~], three semester hours;

(iii) - (v) (No change.)

(D) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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CHAPTER 445. ADMINISTRATIVE INSPECTIONS AND PENALTIES

37 TAC §§445.1, 445.9, 445.11, 445.13, 445.15

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 445, Administrative Inspections and Penalties, §445.1, concerning Entity Inspections, §445.9,

concerning Minor Violations, §445.11, concerning Major Violations, §445.13, concerning Disciplinary Hearings, and §445.15, concerning Judicial Enforcement. The purpose of the proposed amendments is to develop rule changes that allow the Commission to establish a risk based approach to conducting inspections, establish a reasonable time frame for opening a complaint case after finding inspection violations and adopt an enforcement matrix for assessing penalty amounts or disciplinary amounts relating to violations to agency statute and rules. These recommendations came from the Sunset Review process and have been incorporated into the Commission's enabling legislation.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years these proposed amendments are in effect the public benefit will be that, the Commission would be able to take a more strategic approach to conducting its inspections of fire departments and training providers. By using a consistent time frame for opening complaint cases, the commission would treat all regulated entities fairly, improve compliance outcomes and more accurately track its compliant cases. Adopting the matrix in rule will provide the public with the opportunity to comment on its development and provide regulated entities with ready access to the Commission's enforcement guidelines. There will be no effect to individuals required to comply with these amendments as proposed. There will be no effect on small or micro businesses.

Comments regarding these proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments will be reviewed and discussed at a future Commission meeting.

These amendments are proposed under Texas Government Code, Chapter 419, Subchapter B, Regulation and Assisting Fire Fighters and Fire Departments

Cross reference to statute: Texas Government Code, §419.027, Biennial Inspections.

§445.1. Entity Inspections.

(a) The Commission ~~[eommission]~~ shall conduct at least biennial inspections of the entities that fall under the regulatory authority of the Commission, and may perform risk based inspections of entities the Commission determines to be at risk ~~[eommission]~~.

(b) The purpose of these inspections shall be to promote safety and proficiency in the fire service by ensuring compliance with state law and Commission ~~[eommission]~~ rules pertaining to minimum standards for fire protection personnel education, protective clothing, self-contained breathing apparatus, personal alert safety systems, standard operating procedures, or any other aspect of the fire service regulated by the Commission ~~[eommission]~~.

(c) (No change.)

§445.9. Minor Violations.

If during the course of a departmental inspection, the inspector determines the department has committed minor violations, the following procedures shall apply.

(1) The inspector shall issue a notice of minor violations ~~[formal notice of noncompliance]~~ identifying the findings resulting from the compliance inspection ~~[of fact]~~.

(2) The department then has 30 ~~[14]~~ calendar days from the date the ~~[formal]~~ notice of minor violations ~~[noncompliance]~~ is received to ~~[correct the violations and]~~ provide the Commission ~~[eommission]~~ with ~~[proof of compliance or to provide the commission with]~~ a written schedule of actions which will be carried out to correct the minor violations ~~[achieve compliance]~~. The schedule of actions will allow necessary amounts of time for such things as obtaining items through city requisitions and bid processes, when necessary. Lack of funds is not an acceptable reason for delay.

(3) If the department fails to provide a plan for obtaining ~~[proof of]~~ compliance ~~[or a written schedule of actions]~~ within the required time frame, a hearing may be scheduled. ~~[14 calendar days, an administrative penalty of up to \$300 per violation may be recommended by the commission staff.]~~ If determined by the hearing process that violations occurred and were not corrected, the department may be: ~~[the department has been compelled to submit proof of compliance or a schedule of actions for the same or similar violations within the previous five years, the administrative penalty shall be up to \$600 per violation.]~~

~~[(4) In the event the department fails to achieve compliance in accordance with the agreed-upon schedule of actions, an administrative penalty of up to \$600 per violation may be recommended by the commission staff unless the commission staff determines that sufficient reason exists for extending the time allowed for compliance.]~~

~~[(5) In all cases where an administrative penalty is recommended by the commission staff, the department may be granted 14 calendar days to pay the administrative penalty and come into compliance or submit a written notice of appeal.]~~

~~[(6) If the department fails to pay the administrative penalty and come into compliance within the required time frame, a hearing may be scheduled. If determined by the hearing process that violations occurred, the department may be:]~~

(A) allowed extra time to come into compliance;

(B) assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;

(C) required to furnish proof of compliance.

§445.11. Major Violations.

If during the course of a departmental inspection the inspector determines the department has committed major violations involving protective clothing, self-contained breathing apparatus, personal alert safety systems or breathing air, the following procedures shall apply~~[-]~~.

(1) The inspector shall issue a formal notice of noncompliance identifying the violations and the corrective measures to be taken by the department to correct the listed violations ~~[findings of fact]~~.

(2) The department has 30 calendar days from the date of receipt of the formal notice of noncompliance to correct the violations, and to provide the Commission with proof of compliance or submit written notice of appeal. [An administrative penalty of up to \$500 per violation may be recommended by the commission staff. If it is determined by the commission that the department has been subjected to an administrative penalty for the same or similar violations within the previous five years, the administrative penalty may be up to \$1,000 per violation.]

(3) If the [The] department fails to come into compliance within the allotted time frame, an administrative penalty of up to \$500 per day may be assessed from the first day of formal notice of violation for each violation. If it is determined that the department was assessed administrative penalties for the same or similar violations within the previous five years, the administrative penalty of up to \$1,000 per violation may be assessed. [then has 14 calendar days from the date of the receipt of the formal notice of noncompliance to pay the administrative penalty, correct the violations, and to provide the commission with proof of compliance or submit written notice of appeal.]

(4) The [If the] department then has 30 calendar days from formal notice of administrative penalties assessed to pay the administrative penalty or submit written notice of appeal. [fails to pay the administrative penalty and come into compliance within the total 14 calendar day time frame, a hearing shall be scheduled. If determined by the hearing process that violations occurred, the department may be:]

[(A) allowed extra time to come into compliance;]

[(B) assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;]

[(C) required to furnish proof of compliance;]

(5) Upon receipt of a written appeal concerning administrative action or penalty a hearing will be scheduled. Chapter 154 of the Texas Civil Practice and Remedies Code shall be used as a procedural guide.

§445.13. Disciplinary Hearings.

A complaint case shall be opened no later than the 30th day after formal notice to the fire department, training provider or individual, concerning unresolved major violations found during an inspection. A hearing will be scheduled with the fire department, training provider or individual to determine administrative actions or penalties. The Commission shall consider the following factors when determining administrative penalties: [Upon the filing of a complaint with the commission charging a regulated entity with a violation of the Code or commission regulations as grounds for disciplinary action, the commission shall provide for a hearing of the charges. The commission's rules of practice and procedure govern disciplinary proceedings under this chapter.]

- (1) compliance history;
- (2) seriousness of the violation;
- (3) the safety threat to the public or fire personnel;
- (4) any mitigating factors; and
- (5) any other factors the commission considers appropriate.

§445.15. Judicial Enforcement.

The Commission may enter a default order if a fire department or training provider fails to take action to correct a violation found during an inspection conducted under this chapter, or to request an informal settlement conference before the 61st day after the date the Commission provides to the department or provider notice requiring the department or provider to correct the violations. [If a department is found to have committed major violations of the same or similar nature on three or more occasions within the previous five years, proceedings for injunctive relief, penalties, and discipline may be instituted; provided, however, that this section shall not prohibit the commission from resorting to judicial enforcement for any violation of the Code or rules.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 17, 2009.

TRD-200902939

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 936-3838

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter I, consisting of §§1.401 - 1.405, 1.407, 1.409, and 1.411, concerning the In-Home and Family Support Mental Retardation Program in Chapter 1, State Mental Retardation Authority Responsibilities; and the repeal of existing Subchapter I, consisting of §§1.401 - 1.414, concerning the Texas Department of Mental Health and Mental Retardation (TDMHMR) In-Home and Family Support Program, in Chapter 1, State Mental Retardation Authority Responsibilities.

BACKGROUND AND PURPOSE

DADS' In-Home and Family Support-Mental Retardation (IHFS-MR) Program is authorized by Texas Health and Safety Code, Chapter 535, and provides a grant (i.e., funds) to an eligible person and his family to purchase an item that meets a need that exists solely because of the person's mental disability or co-occurring physical disability. Additionally, the item must (1) support the person to live in the person's natural home; (2) integrate the person into the community; or (3) promote the person's self-sufficiency. The Texas Legislature appropriates approximately \$5 million for the program annually.

The program was originally administered through TDMHMR and applied to individuals in the mental health and mental retardation priority populations. With the division of mental health and mental retardation services between the Department of State Health Services and DADS, portions of the rule related to mental health have become obsolete.

The proposed new subchapter, and repeal of the existing subchapter, deletes mental health references, adds a one-time (lifetime) grant of up to \$3600 for architectural modifications or special equipment, and eliminates detailed procedural provisions, which will be included in the program handbook.

The program's handbook is being expanded to include the detailed requirements for allowable and unallowable costs, as well as the procedural provisions eliminated in the proposed rules.

SECTION-BY-SECTION SUMMARY

Proposed new §1.401 describes the purpose of the subchapter.

Proposed new §1.402 states that the subchapter applies to a mental retardation authority (MRA) that administers the IHFS-MR Program

Proposed new §1.403 contains the definitions for the words and terms used in the subchapter.

Proposed new §1.404 describes the criteria, purpose, and limitations of the IHFS-MR Program.

Proposed new §1.405 describes the services and equipment that may be acquired with IHFS-MR Program funds.

Proposed new §1.407 describes the diagnosis, residency, financial, and need requirements a person must meet to be eligible for assistance.

Proposed new §1.409 describes how DADS determines eligibility, processes applications, and administers the IHFS-MR Program, including the waiting list, written plan, and penalties.

Proposed new §1.411 describes which MRA determinations may be appealed and how the appeal is conducted.

The repeal of §§1.401 - 1.414 allows for the adoption of new sections governing the IHFS-MR Program.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and repeal are in effect, enforcing or administering the new sections and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the new sections do not add any new requirements for small businesses or micro-businesses. Only an MRA, which is a unit of local government, may administer the IHFS-MR Program.

PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections and repeal are in effect, the public benefit expected as a result of enforcing the new sections and repeal is that the rules will provide more flexibility for the IHFS-MR Program, allow for the realistic use of allowable items and services, and provide clear guidance to MRAs in administering the program.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the new sections and repeal. The new sections and the repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Marcia Shultz at (512) 438-3532 in DADS' Mental Retardation Authorities section. Written comments on the proposal may

be submitted to Texas Register Liaison, Legal Services-024, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 024" in the subject line.

SUBCHAPTER I. TDMHMR IN-HOME AND FAMILY SUPPORT PROGRAM

40 TAC §§1.401 - 1.414

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §535.002(a), which requires the adoption of rules to implement and administer the IHFS-MR Program.

The repeal implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §535.002(a).

§1.401. *Purpose.*

§1.402. *Application.*

§1.403. *Definitions.*

§1.404. *TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations.*

§1.405. *Allowable Costs.*

§1.406. *Unallowable Costs.*

§1.407. *Eligibility Determination.*

§1.408. *Applying for Assistance and Processing Applications.*

§1.409. *Written Plan and Disbursing Assistance.*

§1.410. *Administrative Implementation.*

§1.411. *Appeal.*

§1.412. *Exhibits.*

§1.413. *References.*

§1.414. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200902865

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER I. IN-HOME AND FAMILY SUPPORT MENTAL RETARDATION PROGRAM

40 TAC §§1.401 - 1.405, 1.407, 1.409, 1.411

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §535.002(a), which requires the adoption of rules to implement and administer the IHFS-MR Program.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §535.002(a).

§1.401. Purpose.

The purpose of this subchapter is to describe the requirements for administering the IHFS-MR Program, pursuant to Chapter 535, Texas Health and Safety Code.

§1.402. Application.

This subchapter applies to an MRA that administers the IHFS-MR Program.

§1.403. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Assistance--A subsidy granted under the IHFS-MR Program to a person or family to spend on an item that meets the criteria described in §1.404(a) of this subchapter (relating to In-Home and Family Support-Mental Retardation Program--Criteria, Purpose, and Limitations).

(2) Co-payment percentage--The percentage of the cost of an item for which a recipient must pay.

(3) DADS--The Department of Aging and Disability Services.

(4) Date of eligibility--The documented date that an MRA determines a person is eligible for assistance in accordance with §1.407 of this subchapter (relating to Eligibility Determination).

(5) Day--A calendar day.

(6) Developmental delay--In accordance with §108.23(9) of this title (relating to Definitions), a significant variation in normal development in one or more of the following areas, as measured and determined by appropriate diagnostic instruments or procedures administered by an interdisciplinary team and by informed clinical opinion:

(A) cognitive development;

(B) physical development, including vision and hearing, gross and fine motor skills, and nutrition status;

(C) communication development;

(D) social and emotional development; and

(E) adaptive development.

(7) Emergency--A documented:

(A) situation that places the health and safety of a person at risk;

(B) impending out-of-home placement of a person; or

(C) other crisis situation, as determined by an MRA (e.g., natural disaster, house fire).

(8) Family--A group that consists of a person with a mental disability and that person's parent, sibling, spouse, child, legal guardian and others who live with the person in the person's natural home.

(9) IHFS-MR Program--The DADS In-Home and Family Support-Mental Retardation Program.

(10) Legal guardian--An individual appointed by a court of competent jurisdiction to be guardian of the person in accordance with the Texas Probate Code, Chapter XIII.

(11) Mental disability--Mental retardation, pervasive developmental disorder, or developmental delay.

(12) Mental retardation--Pursuant to the Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(13) MRA--Mental retardation authority. An entity designated by the executive commissioner of the Health and Human Services Commission in accordance with the Texas Health and Safety Code, §533.035(a).

(14) Natural home--The place a person lives or intends to live in the community, either independently (with or without roommates) or with his or her family, in which a natural support system, such as family, friends, and services available to the general population, is available to the person.

(15) Other support program--Any form of local, state, or federal support or service, or any support or service provided with public or private funds to people with mental or physical disabilities or their families, other than assistance provided through the IHFS-MR Program.

(16) Parent--A natural, foster, surrogate, or adoptive parent.

(17) Person--As appropriate to the context in which the term is used, an individual with a mental disability:

(A) who lives independently and who intends to apply or who has applied for assistance; or

(B) whose family intends to apply for or has applied for assistance.

(18) Pervasive developmental disorder--A disorder beginning in childhood, including autism, that meets the criteria for pervasive developmental disorder established in the most recent edition of the Diagnostic and Statistical Manual (DSM).

(19) Physical disability--A physical impairment that:

(A) is likely to continue indefinitely;

(B) results in substantial functional limitations in one or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(C) reflects the need for care, treatment, services or supports, which are of lifelong or extended duration and which are individually planned and coordinated.

(20) Recipient--A person or family who is receiving assistance.

(21) Third-party resource--Funding available to a person or family (e.g., public or private insurance, foster care reimbursements, trust, court settlement) that is not from any other support program.

§1.404. In-Home and Family Support-Mental Retardation Program--Criteria, Purpose, and Limitations.

(a) The IHFS-MR Program, developed pursuant to the Texas Health and Safety Code, Chapter 535, provides assistance to an eligible person or family to spend on an item that meets the criteria in this subsection.

(1) The item must meet a need that exists solely because of the person's mental disability or co-occurring physical disability and the item must:

(A) directly support the person to live in his or her natural home;

(B) integrate the person into the community; or

(C) promote the person's self-sufficiency.

(2) The item must not be paid for in full or reimbursed in full by a third-party resource.

(b) The IHFS-MR Program provides assistance to eligible persons and families in accordance with this subchapter and to the extent funds are available.

(c) The IHFS-MR Program does not provide assistance solely to improve the living conditions of eligible persons or families living at or below the poverty level. Assistance is neither an entitlement nor an income supplement.

(d) The IHFS-MR Program is a program of last resort; therefore, assistance may not be used to replace items available to an eligible person or family through any other support program or third-party resource.

(e) Assistance may be used to augment items provided through any other support program or paid for or reimbursed by a third-party resource except assistance may not be used to augment items that are available to a person through the Texas Home Living Program or Medically Dependent Children Program. For an eligible person enrolled in the Texas Home Living Program or Medically Dependent Children Program, assistance may be used to acquire an item only if the item meets the criteria described in subsection (a) of this section and it is not in the program's array of services and supports.

(f) Assistance may be used to assist eligible persons and families who are waiting for an item to be provided through any other support program.

§1.405. Provision of Assistance.

Assistance may be used to pay for an item described in this section if the item meets the criteria described in §1.404(a) of this subchapter (relating to In-Home and Family Support-Mental Retardation Program--Criteria, Purpose, and Limitations):

(1) the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, or access of the person;

(2) medical, surgical, therapeutic, diagnostic, and other health services related to the person's mental disability or co-occurring physical disability;

(3) counseling or training programs that assist a family in providing proper care for the person or assist the person who lives independently, and that provide for the special needs of the person or family;

(4) attendant care, home health aid services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5) respite support for a family;

(6) transportation services for a person;

(7) transportation, room, and board costs incurred by a person or family during evaluation or treatment of the person if such costs are pre-approved by the MRA; and

(8) any other item agreed to by the person or family and by the MRA.

§1.407. Eligibility Determination.

(a) A person is eligible for assistance if the MRA determines that the requirements of the diagnosis, residency, financial, and need factors as described in this subsection are met. The MRA must re-determine a person's eligibility each fiscal year that the person or family receives assistance.

(1) Diagnosis factor. A person must:

(A) have a diagnosis of mental retardation;

(B) have a diagnosis of pervasive developmental disorder; or

(C) be younger than four years of age and:

(i) have a diagnosis of a developmental delay that is documented within the previous 12 months; or

(ii) determined to be eligible for early childhood intervention services.

(2) Residency factor.

(A) A person must be living in his or her natural home in the MRA's local service area or the person must be leaving an institutional setting and moving into his or her natural home in the MRA's local service area.

(B) The person's natural home may not be:

(i) an establishment, including a foster care setting, that furnishes room, board, and general supervision in which four or more individuals who are unrelated to the proprietor of the establishment reside;

(ii) a residential facility certified or licensed to provide services that include, but are not limited to, 24-hour supervision, meals, transportation, and social and recreational activities (e.g., Intermediate Care Facility for Persons with Mental Retardation (ICF/MR), state mental retardation facility, nursing facility);

(iii) an inpatient facility (e.g., state mental health facility, general or psychiatric hospital); or

(iv) an assisted living facility.

(3) Financial factor.

(A) The financial factor is based on the current gross income of:

(i) the person who is 18 years of age or older and the person's spouse, if any; or

(ii) the parents of a person who is under 18 years of age.

(B) A person or family applying for assistance meets the requirements of the financial factor if the current gross income is less than 150% of the current Texas median income level, as determined by appropriate documentation (e.g., previous year's federal income tax return, current pay stubs).

(C) A person or family whose income is at or below the median income level for the family size has no co-payment. A person who receives Supplemental Security Income (SSI) has no co-payment. A person or family whose income is at or greater than 105% of the median income level is assessed a co-payment. The co-payment percentage begins at 10% of the cost of the item and increases in 10% increments until 100% of the cost of item is reached, at which point the income is 150% of the median income level and the person or family is not eligible.

(4) Need factor.

(A) The person or family may not be receiving funds through the other In-Home and Family Support Program that serves persons with a physical disability pursuant to the Texas Human Resources Code, Chapter 35, and the person may not be enrolled in a Medicaid waiver program except the Texas Home Living Program or Medically Dependent Children Program.

(B) The person or family must have a need that can be met with an item:

(i) that is listed in §1.405 of this subchapter (relating to Provision of Assistance);

(ii) that meets the criteria described in §1.404(a) of this subchapter (relating to In-Home and Family Support-Mental Retardation Program--Criteria, Purpose, and Limitations); and

(iii) that is not currently available from any other support program.

(b) The MRA staff may provide assistance to a person or family in an emergency (as defined) without first determining if the person meets every eligibility factor. Assistance provided in an emergency is limited to the extent necessary to resolve that emergency.

§1.409. Administrative Implementation.

(a) Applying for assistance. A family, or a person with a mental disability who lives independently, may apply for assistance.

(b) Determining eligibility. Within 30 days after a person or family applies for assistance, the MRA must determine if the person is eligible for assistance in accordance with §1.407 of this subchapter (relating to Eligibility Determination). The person or family must pro-

vide all necessary information for the MRA to determine eligibility in a timely manner.

(c) Waiting list. If IHFS-MR Program funds are not available on a person's date of eligibility, then the person's name is placed on a waiting list in chronological order according to a person's date of eligibility as defined in §1.403(4) of this subchapter (relating to Definitions). If more than one person has the same date of eligibility, then chronological order is further based on the date of application.

(d) Written plan. When IHFS-MR Program funds are available, the MRA staff must identify the person or family with the earliest date of eligibility and ensure a written plan is developed and approved for the person or family. A written plan covers the fiscal year in which it is developed. The written plan describes how assistance will be used and the responsibilities of the recipient and the MRA.

(e) Disbursement of assistance. After approving the written plan, the MRA must disburse assistance in accordance with the written plan. The amount of assistance is based on the cost of the item minus the required co-payment amount, but not to exceed the maximum amount of assistance for the program as determined by DADS. The eligible person may qualify for one or both of the following categories of assistance:

(1) a fiscal-year amount for items approved in the written plan; and

(2) a one-time grant for architectural modifications and the purchase or lease of special equipment in the approved written plan.

(f) Follow-up evaluation. The MRA must conduct a follow-up evaluation after completion of the written plan to determine if the recipient's stated goal and outcome have been achieved and if an additional need has been identified by the recipient.

(g) Change in a recipient's eligibility factor. A recipient must notify the MRA within 10 days after an eligibility factor changes (i.e., diagnosis, residency, financial, or need), as described in §1.407(a) of this subchapter. If notified that an eligibility factor has changed, the MRA must determine, within 30 days after notification, if the recipient continues to be eligible for assistance in accordance with §1.407 of this subchapter. If the MRA determines that the recipient is not eligible for assistance, then the MRA must terminate assistance. A recipient whose assistance has been terminated in accordance with this subsection is entitled to appeal the determination of ineligibility in accordance with §1.411 of this subchapter (relating to Appeal).

(h) Penalty.

(1) The MRA may impose one or more of the following penalties on a recipient if the recipient does not comply with his or her written plan:

(A) immediate termination of assistance;

(B) restitution of assistance received; and

(C) ineligibility for further assistance.

(2) A recipient who has been penalized in accordance with paragraph (1) of this subsection is entitled to appeal the determination to impose a penalty in accordance with §1.411 of this subchapter.

§1.411. Appeal.

(a) Determinations subject to appeal. Only the following MRA determinations may be appealed:

(1) the determination to deny assistance for a specific item that is permitted under §1.405 of this subchapter (relating to Provision of Assistance);

(2) the determination that a person is not eligible for assistance under §1.407 of this subchapter (relating to Eligibility Determination);

(3) the determination that a recipient is no longer eligible for assistance under §1.409(g) of this subchapter (relating to Administrative Implementation); and

(4) the determination to impose a penalty under §1.409(h) of this subchapter.

(b) Written notification. Within 14 days after making a determination described in subsection (a) of this section, the MRA must provide written notification to the person or family that includes:

(1) the MRA's determination and the reason for the determination;

(2) a statement that the person or family may appeal the determination;

(3) the procedures for requesting an appeal, including the required information;

(4) a statement that the request for appeal must be received within 30 days after receipt of the written notification; and

(5) a description of the appeal and review process.

(c) Appeal and review process.

(1) The appeal is conducted in accordance with §2.46(g) of this title (relating to Notification and Appeals Process) and includes a review of this subchapter and policies governing the IHFS-MR Program. The MRA must notify the appellant in writing of the appeal decision in accordance with §2.46(h) of this title.

(2) The MRA must take action consistent with the appeal decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 13, 2009.

TRD-200902864

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 438-3734



CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.42

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §90.42, concerning standards for facilities serving persons with mental retardation or related conditions, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions.

BACKGROUND AND PURPOSE

Current federal regulations for the Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) Program at 42 Code of Federal Regulations, §483.460(a)(4), state that "to the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section." The current rule at §90.42(e)(11) states, "In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by a medical doctor." This is unduly restrictive and offers no latitude to incorporate the broader permission given in the federal regulations to allow use of advanced practice nurses and physician assistants to conduct the required exam. The rule amendment allows ICF/MR providers to use advanced practice nurses or physician assistants, in addition to medical doctors, to perform annual health exams.

SECTION-BY-SECTION SUMMARY

The amendment to §90.42 allows physician assistants and advanced practice nurses to perform annual health exams.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because DADS currently requires ICF/MR providers to provide annual health exams for individuals residing in their facilities. Allowing an ICF/MR provider to use an advanced practice nurse or physician assistant to perform an annual health exam will have no bearing on cost because reimbursement from insurers is likely to be the same for the exam regardless of who provides the exam.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment will be to strengthen a founding principle in the ICF/MR Program to afford normalized services and supports for individuals. The rule amendment allows individuals enrolled in the ICF/MR Program to receive the same standard of medical care that is the norm for individuals in the broader community.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS' Regulatory Services

section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-035, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be either (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 035" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§90.42. *Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.*

(a) - (d) (No change.)

(e) Additional requirements.

(1) - (10) (No change.)

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by: ~~[a medical doctor.]~~

(A) a person licensed to practice medicine in accordance with Texas Occupations Code, Chapter 155 (relating to License to Practice Medicine);

(B) a person licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204 (relating to Physician Assistants); or

(C) a person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301 (relating to Nurses), and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 13, 2009.

TRD-200902863

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 30, 2009

For further information, please call: (512) 438-3734

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER F. DIABETES REGISTRY

25 TAC §61.91

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), withdraws new 25 TAC §61.91, Diabetes Registry Pilot Program (DSHS-09-0010), which appeared in the January 30, 2009, issue of the *Texas Register* (34 TexReg 509). The new rule is no longer appropriate due to new legislation, the

81st Legislature, Regular Session, 2009, House Bill 1363 (uncodified), which was passed after §61.91 was published as proposed. The department will develop a new set of rules that will comply with the new requirements of the new legislation.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902916

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: July 16, 2009

For further information, please call: (512) 458-7111 x6972

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.3

The Commission on State Emergency Communications (CSEC) adopts new §252.3, concerning the administration of the agency's sick leave pool, without changes to the proposed text as published in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2645).

The new rule is intended to satisfy the requirements of Government Code §661.002(c) that agencies "adopt rules and prescribe procedures relating to the operation of the agency sick leave pool."

No comments were received regarding adoption of the proposed new rule.

The new rule is adopted pursuant to Health and Safety Code §771.051 and Government Code §661.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 14, 2009.

TRD-200902882

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: August 3, 2009

Proposal publication date: May 1, 2009

For further information, please call: (512) 305-6930



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1060, §354.1062

The Texas Health and Human Services Commission (HHSC) adopts new §354.1060, concerning Definitions, and amended §354.1062, concerning Authorized Physician Services, in Title 1, Part 15, Chapter 354, Subchapter A, Division 5, Physician and Physician Assistant Services. New §354.1060 is adopted without changes to the proposed text as published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 401) and will not be republished. The amendments to §354.1062 are adopted with clarifying changes to the proposed text as published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 401) and the text of the rule will be republished.

Background and Justification

Proposed new §354.1060 defines "direct supervision," "personal supervision," and "substitute physician" as those terms relate to physician supervision of other physicians in the context of an accredited graduate medical education (GME) program and arrangements under which one physician substitutes for another physician (e.g., in a locum tenens arrangement).

The proposed amendments to §354.1062 clarify when a supervising physician may bill Medicaid for services provided by resident physicians in the context of a GME program and services provided by other professionals. On adoption, the following non-substantive, technical clarifications were made to §354.1062.

In the published proposed text, amended §354.1062(b) described physician services and §354.1062(d) described physician delegated services. On adoption, language from subsection (d) is moved under subsection (b), subsection (d) is deleted, and subsequent adopted subsections are relettered. This change is made to clarify that physician delegated services are not limited or restricted to services only delegated to physician assistants (PAs) and advanced practice nurses (APNs). Authorized physician delegated services include services that are delegated by the physician to any appropriately trained and qualified personnel as described in the rules and laws of the Texas Medical Board, as allowed by federal law.

Amended §354.1062(d) in the adopted text (which was §354.1062(e) in the published proposed text) relates to billing for services provided by a PA or APN. On adoption, this subsection is modified to clarify that services provided by a PA or APN must be consistent with state rules and laws and to include a reference to another rule that describes special billing requirements for an APN who is also a certified registered nurse anesthetist (CRNA).

Comments

The 30-day comment period ended February 23, 2009. During this period, HHSC held a public hearing on February 17, 2009,

and received comments regarding amended §354.1062. A summary of the comments and HHSC's responses follows.

Comment: The Texas Academy of Anesthesiologist Assistants (TAAA), Texas Medical Association (TMA), Texas Pediatric Society (TPS), Texas Academy of Family Physicians (TAFP), Coalition for Nurses in Advanced Practice (CNAP), and Texas Society of Anesthesiologists (TSA) commented that proposed §354.1062(d) was interpreted as too limiting and restricting on the qualifications of persons to whom a physician may delegate services. They commented that the Texas Medical Board rules permit a physician to delegate services to any qualified non-physician and not just to PAs and APNs; and that the delegation can occur in any setting. Several of the commenters suggested a solution that combined proposed subsection (d) into subsection (b) and deleted proposed subsection (d).

HHSC Response: HHSC agrees with the comment and agrees to combine proposed subsection (d) into adopted subsection (b) and delete proposed subsection (d). HHSC determined that this change to the proposed rule was a clarification and not a substantive change.

Comment: TAAA and CNAP commented that they had participated in the development of a previous version of §354.1062 and that the previous version was approved by the Texas Medicaid - Medical Care Advisory Committee (MCAC) on May 8, 2008; however, the version of the rule that was published in the *Texas Register* was significantly different from the rule approved by the MCAC. Further, the Texas Association of Nurse Anesthetists (TANA) commented that proposed §354.1062(d) and (e) should be withdrawn and the version of these subsections as approved by the MCAC on May 8, 2008, should be published for adoption by HHSC.

HHSC Response: HHSC acknowledges the comment but no changes were made to the rule as a result of the comment. The version of the rule that was published in the *Texas Register* was presented at the HHSC Council meeting on November 6, 2008, subsequent to the MCAC meeting on May 8, 2008.

Comment: CNAP commented that proposed §354.1062(d) indicates a physician may only bill for services provided under the physician's supervision and that this represents an additional burden and liability for physicians that is not imposed by current law. Many services provided by APNs are performed under the APN's own license and there is no legal requirement for physician supervision. HHSC should either allow physicians to bill for services of APNs with whom they work, or physicians should not be allowed to bill.

HHSC Response: HHSC has agreed to clarify the rule in response to a previous comment above. That clarification deletes proposed subsection (d) and the adopted subsection (d) addresses services provided by a PA or APN without a direct reference to supervision. The rule as adopted defines physician services within adopted subsections (b) - (e). Adopted subsection (b) describes services performed by the physician and those medical acts delegated by the physician; and adopted subsection (e) describes services provided by a PA or APN.

Comment: CNAP and TANA commented that proposed §354.1062(d) conflicts with the Occupations Code §301.152(d) related to documentation requirements for services provided by an APN, including a CRNA.

HHSC Response: HHSC has agreed to clarify the rule in response to a previous comment above. That clarification deletes

proposed §354.1062(d) and the adopted §354.1062(d) addresses services provided by a PA or APN (including a CRNA) without a direct reference to documentation requirements.

Comment: TANA objects to proposed §354.1062(e) that requires CRNA services be provided pursuant to protocols. TANA stated that protocols are not required because CRNA services are within the scope of their advanced practice license. TANA referenced several letters addressing this issue from the Texas Board of Nursing. The Board of Nursing also references a Texas Office of Attorney General Opinion (JC-0117) related to this issue.

HHSC Response: HHSC agrees and has clarified adopted §354.1062(d), which was §354.1062(e) in the proposed version of the rule. The clarification removes the reference to protocols and inserts language requiring that services be consistent with applicable rules and laws

Comment: TANA stated that proposed rule §354.1062(d) should cross-reference rule §354.1301, which already addresses physician billing for the services of a CRNA. TANA stated that because of the unique billing for anesthesia services, CRNAs are the only type of APN that must bill services as the performing provider. TANA believes that this cross reference is "crucial" to make it clear that CRNA services have special billing requirements.

HHSC Response: HHSC agrees that adding the reference to the related §354.1301 further clarifies the adopted §354.1062(e).

Comment: TAAA stated that the rule shows a preference for services by CRNAs over services performed by anesthesiologist assistants.

HHSC Response: HHSC acknowledges the comment but no changes were made to the rule as a result of the comment. The anesthesiologist assistant profession is not a recognized profession in the Texas Occupations Code and anesthesiologist assistants are not referenced in the rule.

The amendment and new rule are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1062. Authorized Physician Services.

(a) This rule specifies the conditions under which a physician may bill Texas Medicaid for covered services. Such conditions include compliance with this rule as well as compliance with all applicable federal and state laws, rules, regulations and policies relating to covered services.

(b) Physician services. A physician may bill for reasonable and medically necessary services that are within the scope of practice of medicine or osteopathy as defined by state law. Eligible physician services include those performed by the physician and those medical acts delegated by the physician to qualified and properly trained persons acting under the physician's supervision. Delegation and supervision of medical services must be consistent with this chapter and the rules and laws of the Texas Medical Board, and supervision of the delegated medical act must be appropriately documented in the patient's chart. A physician shall not bill the Texas Medicaid program for services if that billing would result in duplicate payment for the same services.

(c) Physician supervising other physicians. A physician supervising other physicians may bill when the supervision and services are performed in the context of an accredited graduate medical educa-

tion program. Facilities and professional practices do not qualify for reimbursement for services provided by resident physicians in an outpatient setting unless the facility or professional practice is owned by, or affiliated with, an accredited graduate medical education program.

(1) For all services billed to the Medicaid program, the supervision must be medically appropriate, as described in this rule, and provided to a resident physician performing a Medicaid-covered service. The supervision must be either personal or direct. To qualify for reimbursement, the medical record must clearly establish:

(A) The nature of the supervisory role of the billing physician in the delivery of the services provided by the resident physician; and

(B) That the supervision complies with the definition of supervision applicable to the covered service, as defined in §354.1060 of this title (relating to Definitions).

(2) Personal supervision is required during the key portions of all major surgeries and the key portions of all other physician services billed to the Medicaid program if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient. Physician services that require personal supervision may include invasive procedures and evaluation and management services that require complex medical decision making. Situations that require personal supervision include those in which:

(A) The clinical condition of the patient is unstable or will likely become unstable during, or as a result of, the planned medical intervention; or

(B) The planned medical intervention, even under optimal conditions, will result in medically reasonable risk for significant morbidity or death following the service or procedure; or

(C) Deviation from expected technique at the time the procedure or service is performed presents a medically reasonable, causally-related, foreseeable risk to the patient's life or health.

(3) For surgical services, the supervising surgeon is responsible for pre-operative, operative, and post-operative care provided to the patient and billed to the Medicaid program. The supervising surgeon, however, may delegate the pre- and post-operative care to a resident if appropriate direct supervision, as defined in §354.1060 of this title, is provided.

(4) For all services that do not require personal supervision and are billed to the Medicaid program, the supervising physician must provide direct supervision. The supervising physician may not provide direct supervision for an activity at the same time as providing personal supervision for another activity, with the following exceptions.

(A) The supervising physician in the outpatient setting may provide personal and direct supervision concurrently for residents providing evaluation and management services; and

(B) A supervising surgeon or supervising anesthesiologist may be involved in two concurrent anesthesia cases with residents. The supervising surgeon or supervising anesthesiologist must be present during all key portions of the procedure if the immediate supervision, participation, or intervention of the supervising physician is medically prudent in order to assure the health and safety of the patient.

(5) Supervision in the outpatient setting. A face-to-face encounter between the physician providing direct supervision and the patient is not required in the outpatient setting in the context of a graduate medical education program. All other requirements for personal or direct supervision in this division must be met for the services to qual-

ify for reimbursement. The supervising physician must document that he/she:

(A) Reviewed the patient's history and physical examination;

(B) Confirmed or revised the patient's diagnosis;

(C) Determined the course of treatment to be followed;

(D) Assured that any needed supervision of interns or residents was provided; and

(E) Confirmed that the documentation in the medical record comports with the level of service billed.

(6) Supervision in the inpatient setting. A physician who supervises other physicians in an inpatient setting must comply with documentation requirements of paragraph (5)(A) - (E) of this subsection and must document that he or she has completed a:

(A) Personal examination of the patient not later than 36 hours after the patient's admission and before the patient's discharge and, as necessary, based on the patient's condition; and

(B) Face-to-face encounter with the patient on the same day as any billed services provided by the resident physician.

(d) Services provided by a physician assistant or advanced practice nurse. If the services are provided by a physician assistant or advanced practice nurse, practicing within the scope of their license and consistent with this chapter and with the rules and laws of the Texas Medical Board and Texas Nursing Board, as applicable, the physician services are covered. Services provided by a certified registered nurse anesthetist must be billed as described in §354.1301 of this title (relating to Certified Registered Nurse Anesthetists' Services).

(e) Substitute physician. A physician may bill for the services of a substitute physician who sees patients in the billing physician's practice under either a reciprocal or locum tenens arrangement. To qualify for reimbursement, the billing physician and substitute physician must comply with the following requirements:

(1) The substitute physician's name and address must be documented on the claim.

(2) The substitute physician must be licensed to practice in the state of Texas.

(3) Consistent with the requirements of §371.1615 and §371.1677 of this title (relating to Provider Responsibility and the Obligation of All Health Care Providers Regarding Exclusion, respectively), the substitute physician must not be on the Medicaid or Title XX provider exclusion list.

(4) The time period for which a physician may bill for the services of a substitute physician is limited to the following situations:

(A) When the billing physician is absent or unavailable for reasons other than active duty as a member of a reserve component of the U.S. Armed Forces, services provided by a substitute physician after the 60th day must be provided by and billed under the substitute physician's own Medicaid provider number.

(B) When the billing physician is absent or unavailable due to active duty as a member of a reserve component of the U.S. Armed Forces, the billing physician may bill for the services of a substitute physician for a period of 60 days or a longer continuous period during all of which the billing physician has been called or ordered to active duty as a member of a reserve component of the Armed Forces. Medicaid may reimburse the billing physician for services provided by

the substitute physician until the billing physician is no longer on active duty as a member of a reserve component of the Armed Forces.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902906

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 5, 2009

Proposal publication date: January 23, 2009

For further information, please call: (512) 424-6900



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.110, §355.111

The Health and Human Services Commission (HHSC) adopts amendments to §355.110, Informal Reviews and Formal Appeals, and §355.111, Administrative Contract Violations, in its Reimbursement Rates Chapter, without changes to the proposed text as published in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2645) and will not be republished.

Background and Justification

Section 355.110 establishes the requirements for requesting informal reviews and formal appeals of HHSC adjustments to cost report data and §355.111 establishes actions HHSC may take in response to administrative contract violations relating to cost reporting requirements. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace outdated references and clarify the title in which the updated references are located.

Comments

The 30-day comment period ended May 31, 2009. During this period, HHSC received no comments regarding the proposed amendments to this rule.

The amendments are adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 14, 2009.

TRD-200902866

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 3, 2009

Proposal publication date: May 1, 2009

For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §17.308

The Texas Department of Agriculture (the department) adopts an amendment to Chapter 17, Subchapter G, §17.308, concerning the use of Go Texan Partner Program (GOTEPP) funds, without changes to the proposal as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3337).

The amendment adds new subsection (h) to §17.308, which prohibits a person from receiving GOTEPP grant funds, either as an applicant or a vendor, during a period of time that the person is acting as an agent for an applicant for GOTEPP grant funds. The adoption of the amendment adds transparency to the process of expending grant funds.

No comments were received on the proposal.

The amendment is adopted under Agriculture Code (the Code), §46.012, which provides the department with the authority to adopt rules to administer Chapter 46 of the Code, relating to the Go Texan Partner Program; and §46.005, which authorizes the department to establish standards for the use of grants and matching funds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2009.

TRD-200902938

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: August 6, 2009

Proposal publication date: May 29, 2009

For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

The State Board of Education (SBOE) adopts amendments to §§112.1, 112.21, and 112.41 and new §§112.10 - 112.16, 112.17 - 112.20, and 112.31 - 112.39, concerning the Texas essential knowledge and skills (TEKS) for science. The amendments to §§112.1, 112.21, and 112.41 and new §§112.10, 112.17, and 112.31 are adopted without changes to the proposed text as published in the February 13, 2009, issue of the *Texas Register* (34 TexReg 927) and will not be republished. New §§112.11 - 112.16, 112.18 - 112.20, and 112.32 - 112.39 are adopted with changes to the proposed text as published in the February 13, 2009, issue of the *Texas Register* (34 TexReg 927). The sections establish the TEKS for science courses in elementary, middle school, and high school. The adopted amendments and new sections establish revised science TEKS for implementation beginning with the 2010-2011 school year.

In January, February, May, September, October, and December 2008, committees were convened to review the science TEKS. In April, May, September, and October 2008, committees were convened to develop TEKS for a new earth and space science course. During the September 2008 meeting, the SBOE received draft recommendations for proposed revisions to the science TEKS. Informal public feedback and feedback from expert reviewers was shared with the science TEKS review committees as they continued to work on their recommendations for proposed revisions in November and December 2008. A discussion item regarding the proposed revisions to 19 TAC Chapter 112 was presented to the Committee of the Full Board during the November 2008 meeting.

The Committee of the Full Board held a public hearing on 19 TAC Chapter 112, Texas Essential Knowledge and Skills for Science, Subchapter A, Elementary, Subchapter B, Middle School, and Subchapter C, High School, on January 21, 2009. At the January 23, 2009, meeting, the SBOE amended and approved the proposed revisions for first reading and filing authorization.

The Committee of the Full Board held a second public hearing on the proposed revisions to 19 TAC Chapter 112, Subchapters A - C, on March 25, 2009. At the March 27, 2009, meeting, the SBOE amended and approved the proposed revisions for second reading and final adoption.

The following changes were made to the proposed revisions to 19 TAC Chapter 112 since published as proposed.

Elementary.

The student expectation in subsection (b)(4)(A) in Kindergarten-Grade 5 that contains supplies and equipment lists was modified to re-order, remove, or add some supplies and equipment.

Grades 3-8 and All High School Courses.

The student expectation in subsection (b)(3)(A) in Grades 3-8 and in subsection (c)(3)(A) in all high school courses was amended to read, "in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student."

§112.12, Grade 1.

The student expectation in subsection (b)(8)(C) in Grade 1 was amended to add the phrase "and day and night."

§112.13, Grade 2.

The student expectation in subsection (b)(7)(A) in Grade 2 was substituted to read as follows: "observe and describe rocks by size, texture, and color."

The student expectation in subsection (b)(8)(D) in Grade 2 was substituted to read as follows: "observe, describe, and record patterns of objects in the sky, including the appearance of the Moon."

§112.14, Grade 3.

The student expectation in subsection (b)(6)(A) in Grade 3 was amended by inserting the word "mechanical" after the word "including."

The student expectation in subsection (b)(6)(B) in Grade 3 was substituted to read as follows: "demonstrate and observe how position and motion can be changed by pushing and pulling objects to show work being done such as swings, balls, pulleys, and wagons."

The knowledge and skills statement in subsection (b)(8) in Grade 3 was amended by substituting the phrase "in the Sun, Earth, and Moon system" with "among objects in the sky."

The following student expectation was added in Grade 3 as subsection (b)(8)(D): "identify the planets in Earth's solar system and their position in relation to the Sun."

The student expectation in subsection (b)(10)(B) in Grade 3 was amended by substituting the words "from the" with "in response to living in a certain."

The student expectation in subsection (b)(10)(C) in Grade 3 was amended by substituting the word "mealworms" with "frogs."

§112.15, Grade 4.

The knowledge and skills statement in subsection (b)(6) in Grade 4 was amended by substituting the word "occurs" with "exists."

The student expectation in subsection (b)(6)(A) in Grade 4 was amended by inserting the word "mechanical" after the word "including" and substituting the word "electrical" for "electricity."

The student expectation in subsection (b)(6)(D) in Grade 4 was substituted to read as follows: "design an experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism."

The student expectation in subsection (b)(8)(A) in Grade 4 was substituted to read as follows: "measure and record changes in weather and make predictions using weather maps, weather symbols, and a map key."

The student expectation in subsection (b)(8)(C) in Grade 4 was amended by striking the phrase "in the reflection of sunlight," and adding the words "tides, seasons."

The student expectation in subsection (b)(9)(A) in Grade 4 was substituted to read as follows: "investigate that most producers need sunlight, water, and carbon dioxide to make their own food, while consumers are dependent on other organisms for food."

§112.16, Grade 5.

The student expectation in subsection (b)(6)(A) in Grade 5 was amended by inserting the word "mechanical" after the word "including."

The following student expectation was added in Grade 5 as subsection (b)(6)(D): "design an experiment that tests the effect of force on an object."

The following student expectation was added in Grade 5 as subsection (b)(8)(D): "identify and compare the physical characteristics of the Sun, Earth, and Moon."

§112.18, Grade 6.

The student expectation in subsection (b)(2)(A) in Grade 6 was amended by adding the words "comparative and" to "descriptive investigations."

The student expectation in subsection (b)(5)(D) in Grade 6 was amended by substituting the word "compounds" with "a new substance."

The student expectation in subsection (b)(8)(B) in Grade 6 was amended by striking the word "motion" and adding the word "position."

The following student expectation was added in Grade 6 as subsection (b)(8)(E): "investigate how inclined planes and pulleys can be used to change the amount of force to move an object."

§112.19, Grade 7.

The student expectation in subsection (b)(2)(A) in Grade 7 was amended by adding the words "comparative and" to "descriptive investigations."

The student expectation in subsection (b)(7)(B) in Grade 7 was substituted to read as follows: "illustrate the transformation of energy within an organism such as the transfer from chemical energy to heat and thermal energy in digestion."

The student expectation in subsection (b)(12)(A) in Grade 7 was amended by substituting the phrase "are adapted to perform" with "have adaptations that allow."

The student expectation in subsection (b)(14)(C) in Grade 7 was amended by adding the words "in the nucleus."

§112.20, Grade 8.

The student expectation in subsection (b)(2)(A) in Grade 8 was amended by adding the words "comparative and" to "descriptive investigations."

The student expectation in subsection (b)(2)(B) in Grade 8 was amended by adding the words "comparative and" to "experimental investigations."

The student expectation in subsection (b)(7)(C) in Grade 8 was amended by substituting the words "lunar cycle to its" with "position of the Moon and Sun to their."

High school.

A student expectation in subsection (c)(1) was modified where needed to read as follows: "demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials."

A student expectation in subsection (c)(3) was modified where needed to read as follows: "draw inferences based on data related to promotional materials for products and services."

A student expectation in subsection (c)(3) was modified where needed to read as follows: "communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials."

§112.32, Aquatic Science.

The student expectation in subsection (c)(3)(F) in Aquatic Science was substituted to read as follows: "research and describe the history of aquatic science and contributions of scientists."

§112.34, Biology.

The student expectation in subsection (c)(2)(C) in Biology was amended by substituting the words "new areas or science" with "new areas of science."

The student expectation in subsection (c)(2)(E) in Biology was amended by substituting the phrase "investigative procedures" with "descriptive, comparative, and experimental investigations."

The following student expectation was added in Biology as subsection (c)(3)(F): "research and describe the history of biology and contributions of scientists."

The following student expectation in subsection (c)(7)(B) was stricken in Biology: "analyze and evaluate the sufficiency or insufficiency of common ancestry to explain the sudden appearance, stasis, and sequential nature of groups in the fossil record." Also in Biology, the following student expectation in subsection (c)(7)(B) was added: "analyze and evaluate scientific explanations concerning any data of sudden appearance, stasis, and sequential nature of groups in the fossil record."

The following student expectation was added in Biology as subsection (c)(7)(G): "analyze and evaluate scientific explanations concerning the complexity of the cell."

The following student expectation was added in Biology as subsection (c)(9)(D): "analyze and evaluate the evidence regarding formation of simple organic molecules and their organization into long complex molecules having information such as the DNA molecule for self-replicating life."

§112.35, Chemistry.

The student expectation in subsection (c)(1)(A) in Chemistry was substituted to read as follows: "demonstrate safe practices during laboratory and field investigations, including the appropriate use of safety showers, eyewash fountains, safety goggles, and fire extinguishers."

The student expectation in subsection (c)(10)(G) in Chemistry was amended to correct the spelling of the name "Lowery" with "Lowry."

§112.36, Earth and Space Science.

The student expectation in subsection (c)(4)(A) in Earth and Space Science was amended by substituting the phrase "the concept of an expanding universe that originated about 14 billion years ago" with "current theories of the evolution of the universe, including estimates for the age of the universe."

The student expectation in subsection (c)(5)(B) in Earth and Space Science was amended by substituting the words "sources of heat" with "thermal energy sources."

The student expectation in subsection (c)(6)(A) in Earth and Space Science was amended by inserting the words "that could have occurred."

The student expectation in subsection (c)(7)(B) in Earth and Space Science was amended by striking the phrase "apply radiometric dating methods that can be used to" and adding the phrase "using radiometric dating methods."

The student expectation in subsection (c)(8)(A) in Earth and Space Science was substituted to read as follows: "analyze

and evaluate a variety of fossil types such as transitional fossils, proposed transitional fossils, fossil lineages, and significant fossil deposits with regard to their appearance, completeness, and alignment with scientific explanations in light of this fossil data."

The student expectation in subsection (c)(13)(F) in Earth and Space Science was amended by adding the phrase "given the complexity of living systems."

§112.37, Environmental Systems.

The student expectation in subsection (c)(9)(G) in Environmental Systems was substituted to read as follows: "analyze how ethical beliefs can be used to influence scientific practices such as methods for increasing food production."

The following student expectation was added in Environmental Systems as subsection (c)(9)(H): "analyze and evaluate different views on the existence of global warming."

§112.38, Physics.

The student expectation in subsection (c)(5)(C) in Physics was amended by substituting the words "their centers" with "them."

The Texas Education Agency determined that the rule actions will have no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2009-2010 school year. The earlier effective date will allow districts to begin preparing for implementation in the 2009-2010 school year and will provide for appropriate alignment with the new end-of-course exam development schedule. The effective date is 20 days after filing as adopted.

Following is a summary of public comments and corresponding responses regarding the proposed revisions to 19 TAC Chapter 112, Subchapters A - C.

Comment. One teacher expressed support for an emphasis on empirical data at the elementary grades.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the elementary TEKS are precise in providing examples for each objective.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the explicit expectation of investigative time in the elementary curriculum was helpful and agreed with the percentages used in the revisions.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Thirty-seven teachers, one administrator, two parents, and two community members commented that the percentage of time spent on classroom and outdoor investigations should be increased to 80% in all elementary grades.

Response. The SBOE disagreed and determined that the revised TEKS contained the appropriate percentage of time spent in classroom and outdoor investigations for each grade level.

Comment. One teacher expressed support for increased specificity at the elementary grades.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the concept of changes in materials caused by heating and cooling repeats throughout the grades with not enough difference in rigor to warrant so much repeatability.

Response. The SBOE disagreed and determined that the references to changes in materials caused by heating and cooling are appropriately placed in elementary grades in the revised TEKS.

Comment. One teacher commented that the proposed elementary TEKS reflect solid, teachable science for the Kindergarten-Grade 5 student.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the topic of magnets was repeated in many elementary grades.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and properly sequenced the topic of magnets throughout the grades.

Comment. One teacher commented that the quantity of science equipment was great and was a budget concern in the elementary grades.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. One teacher expressed opposition to the deletion of the systems TEKS in all grade levels.

Response. The SBOE disagreed and determined that the organizing concept of systems is integrated throughout the revised elementary TEKS.

Comment. One teacher commented that the concepts of the age of the world and reproduction as a basic need of life should be taught at the elementary grades.

Response. The SBOE disagreed and determined that the current placement of these concepts in secondary grades of the revised TEKS was more appropriate for these science concepts.

Comment. One teacher commented that the proposed elementary TEKS are broad and shallow.

Response. The SBOE disagreed and determined that the revised elementary TEKS had appropriate breadth and depth.

Comment. One teacher commented that the elementary TEKS should include more authentic tasks.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher expressed opposition to the recommended percentages of science investigations in the proposed elementary TEKS.

Response. The SBOE disagreed and determined that the recommended percentages for classroom and laboratory investigations in the revised elementary TEKS were appropriate.

Comment. One teacher commented that the TAKScope lessons in science should be included.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the methodology used by a teacher.

Comment. One teacher commented that the laboratory and field language in the proposed elementary introduction is not strong enough to compel instruction.

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. One teacher commented that elementary children need to be provided environmental education outdoors and expressed support for the inclusion of 50% laboratory and field investigations.

Response. The SBOE agreed. The revised elementary TEKS state that, "the student conducts classroom and outdoor investigations." The introductions for each grade level include a recommendation for the percentage of time to be spent on laboratory and field investigations.

Comment. One teacher commented that the proposed elementary revisions are more detailed and to the point.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Six teachers commented that the proposed elementary TEKS need more mention of the solar system and order of planets.

Response. The SBOE agreed and strengthened the student expectations that address the solar system and planets. The SBOE also took action to approve changes to respond to this and other comments.

Comment. One teacher commented that the proposed elementary TEKS do not mention planets, only the Earth, Moon, and Sun system.

Response. The SBOE agreed and strengthened the student expectations that address planets. The SBOE also took action to approve additional changes to respond to this and other comments.

Comment. One teacher commented that if we all truly follow this very sensible approach to teaching science as found in the proposed TEKS, fifth grade teachers would simply reinforce what students discovered through logical, concrete, and expanding exposure to science concepts.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to this and other comments.

Comment. One teacher expressed concern that the average teacher would not be able to easily interpret the elementary TEKS the way they are written.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and were grade-level specific. Further clarification of the standards should occur during curriculum development and professional development.

Comment. One teacher commented that the proposed elementary TEKS should specify time in minutes per week that students

should spend in science by grade level and have some kind of accountability.

Response. The SBOE disagreed. Under statute, TEC, §28.002(i), the SBOE may not adopt rules that designate the time spent by a teacher or a student on a particular task or subject.

Comment. One teacher commented that gloves are not necessary at the elementary level.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Two teachers commented that the order of the proposed elementary TEKS should be shifted so that the life science TEKS follow the section on process skills.

Response. The SBOE disagreed. The order of topics in the revised TEKS would not prevent educators from delivering instruction in a sequence that is effective in their classrooms.

Comment. Two teachers commented that "inexhaustible" resources should be included in the proposed elementary TEKS.

Response. The SBOE disagreed and determined that the use of only the terms "renewable" and "non-renewable" would be more clear and better understood.

Comment. One teacher commented that the materials and equipment for sifting should be added to the lists of tools in the proposed elementary TEKS.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. School districts may use additional equipment at their discretion. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. One teacher commented that the concept of vibrations producing sound was not represented in the proposed elementary TEKS.

Response. The SBOE determined that the presentation of energy, including sound energy, was appropriate as written in the revised elementary TEKS.

Comment. One teacher expressed support for inclusion of recycling and alternative energy concepts in the proposed elementary TEKS.

Response. The SBOE agreed. The SBOE retained the references to recycling and alternative energy in the revised elementary TEKS.

Comment. Twelve administrators and two university/college staff commented that the Kindergarten introduction be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction to the revised Kindergarten TEKS was sufficient and appropriate as written.

Comment. Twelve administrators and two university/college staff commented that numbers in the Kindergarten introductory paragraphs should be shifted to allow the time statement to stand alone, as follows: (4) Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time.

Response. The SBOE disagreed and determined that the introduction to the TEKS was sufficient and appropriate as written.

Comment. One teacher commented that "on a daily basis" should be changed to "one consistent week of each month" to show patterns in seasonal changes throughout the year in Kindergarten.

Response. The SBOE disagreed. The instructional delivery may be adjusted at the local level to best meet the needs of students and teachers.

Comment. One teacher commented that Kindergarten students should be using thermometers.

Response. The SBOE agreed. The revised TEKS include a demonstration thermometer in the list of suggested tools at the Kindergarten level.

Comment. One teacher commented that in Kindergarten, classroom and outdoor investigations should be 70% of the instructional time.

Response. The SBOE disagreed. The proposed revised TEKS include a recommendation that districts facilitate classroom and outdoor investigations for at least 80% of instructional time at the Kindergarten level.

Comment. One teacher commented that in Kindergarten, the following language should be moved from the introduction to a knowledge and skills statement, "The student for at least 80% of instructional time, conducts investigations in the classroom and outdoor investigations following home and school safety procedures."

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. Two hundred and sixty-six teachers commented that a student expectation in Kindergarten should read, "demonstrate how to use and conserve materials such as conserving water and reusing or recycling of paper."

Response. The SBOE disagreed and determined that the revised TEKS appropriately included the use, conservation, and reuse or recycling of plastic and metal, as well as paper.

Comment. One teacher commented that standard units of measurement, as well as nonstandard units, should be included in the proposed Kindergarten TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two hundred and sixty-six teachers commented that a student expectation in Kindergarten should be simplified to remove the portion of the expectation that required students to make predictions based on observations and to simply expect students to make observations of patterns in nature such as the shapes of leaves.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Twelve administrators and two university/college staff commented that a student expectation in Kindergarten should be changed to, "explore what scientists do and how they investigate things in the natural world and use tools to help in their investigations."

Response. The SBOE disagreed and retained the proposed student expectation, "describe what scientists do," which would not prohibit educators from making connections between what scientists do with the science students are learning.

Comment. Ten teachers commented that timing devices should be removed from the proposed Kindergarten TEKS.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and sixty-six teachers commented that tools in Kindergarten should not include cameras, terrariums, aquariums, weather instruments (unless specified), clocks, collection nets, and nonstandard measuring items.

Response. The SBOE agreed that cameras should be removed from the equipment list but disagreed with additional recommended adjustments to the list and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE also took action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and sixty-six teachers commented that relative size and mass are not developmentally correct vocabulary for Kindergarten students.

Response. The SBOE disagreed and determined that the revised TEKS are grade appropriate and clearly written.

Comment. Twelve administrators and two university/college staff commented that a student expectation in Kindergarten should be changed to, "explore different forms of energy such as light, heat, and sound."

Response. The SBOE disagreed and determined that the phrase, "use the five senses to explore. . ." was an appropriate expectation.

Comment. Ten teachers commented that additional examples of movement, "such as a push or pull," should be added to the physical sciences in Kindergarten.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and included sufficient examples of movement.

Comment. Twelve administrators and two university/college staff commented that in Kindergarten, a student expectation should be revised to read, "observe and describe properties of water."

Response. The SBOE disagreed and determined that the revised TEKS included appropriate references regarding water.

Comment. Two hundred and sixty-six teachers commented that in Kindergarten, students should, "observe and describe objects in the sky such as the Moon and Sun." The reference to "stars" and "clouds" should be removed from the proposed student expectation.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate with the reference to stars and clouds.

Comment. Two teachers, nine administrators, and two university/college staff commented that in Kindergarten, the same text as Grade 3, as follows, should also be used: "The student knows that organisms undergo similar life processes and have structures that help them survive within their environments."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. Nine administrators and two university/college staff commented that in Kindergarten, the student expectation, "identify ways that young plants resemble the parent plant," should be deleted.

Response. The SBOE disagreed and determined that the revised student expectation was appropriate and provided necessary content for students.

Comment. One teacher commented that the skills in Grade 1 are not age appropriate, nor do they engage students in meaningful learning for their age.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate for Grade 1 students and retained the scientific investigation and reasoning process skills.

Comment. Ten administrators and two university/college staff commented that the introduction of Grade 1 be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 1 TEKS was sufficient and appropriate as written.

Comment. Ten administrators and two university/college staff commented that numbers in the introductory paragraphs of Grade 1 should be shifted to allow the 80% time statement to stand alone.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 1 TEKS was sufficient and appropriate as written.

Comment. Two hundred and fifty-eight teachers expressed opposition to the inclusion of plastics in the list of materials reused or recycled in Grade 1.

Response. The SBOE disagreed and determined that the revised TEKS appropriately included the use, conservation, and reuse or recycling of plastics as well as other materials.

Comment. One teacher questioned the relevancy of finding a home for a classroom pet in Grade 1.

Response. The SBOE disagreed and determined that the examples, which are designated by the phrase "such as" in the revised TEKS, are appropriate.

Comment. Ten administrators and two university/college staff commented that students in Grade 1 should demonstrate how scientists investigate the natural world.

Response. The SBOE disagreed and determined that the revised student expectation, "describe what scientists do," was appropriate and may be inclusive of "how" scientists investigate and use tools.

Comment. Two hundred and fifty-eight teachers commented that the following items should be deleted from the Grade 1 tool list: nonstandard measuring items, clocks, cameras, terrariums and aquariums, collecting nets, and weather instruments (unless specified).

Response. The SBOE agreed that cameras should be deleted from the Grade 1 equipment list and determined that wind socks should replace weather vanes. The SBOE disagreed with the additional recommended changes and determined that the revised TEKS contained appropriate equipment and supply lists.

The SBOE also took action to approve the proposal with additional changes in response to other comments.

Comment. One teacher expressed opposition to five-year-olds exploring magnets.

Response. The SBOE disagreed and determined that the revised TEKS contain knowledge and skills that are appropriate for Grade 1.

Comment. Two hundred and fifty-eight teachers commented that cameras should be removed from the tool list in Grade 1.

Response. The SBOE agreed and took action to amend the language in subsection (b)(4)(A) in Grade 1 to remove cameras from the list of tools.

Comment. Ten teachers commented that the heating and cooling reference in Grade 1 should read, "the addition or reduction of heat."

Response. The SBOE disagreed and determined that the reference to heating and cooling was appropriate.

Comment. Ten teachers commented that in Grade 1, students should "explore" rather than "identify and discuss" different forms of energy such as light, heat, and sound.

Response. The SBOE disagreed and determined that the revised TEKS contained skills and expectations that were appropriate for Grade 1.

Comment. Two hundred and fifty-eight teachers commented that in Grade 1, students should "explore" rather than "predict and describe" how a magnet can be used to push or pull an object.

Response. The SBOE disagreed and determined that the revised TEKS contained skills and expectations that were appropriate for Grade 1.

Comment. Ten teachers commented that the student expectation in Grade 1 relating to the movement of objects should state "such as a push or pull."

Response. The SBOE disagreed and determined that the revised TEKS contained sufficient examples such as moving in a straight line, zig zag, up and down, back and forth, round and round, and fast and slow.

Comment. One teacher commented that it was difficult to determine what "gather evidence" looked like in Grade 1.

Response. The SBOE disagreed and determined that the language in the revised TEKS contained adequate clarification.

Comment. Two hundred and fifty-eight teachers commented that in Grade 1, students should "record weather information including temperature such as hot and cold, clear or cloudy, and rainy or icy" to be more developmentally appropriate in language and concepts.

Response. The SBOE disagreed and determined that the language of revised TEKS was clear and appropriate.

Comment. One teacher commented that the student expectation in Grade 1 where students "record changes" of the Moon and stars was not appropriate and that students should start with clouds.

Response. The SBOE disagreed and determined that this student expectation was appropriate and would not prevent a teacher from asking students to observe and record changes in clouds.

Comment. Two hundred and fifty-eight teachers commented that the proposed Grade 1 TEKS should include, "observe and describe objects in the sky such as the Moon and Sun" and delete reference to the clouds and stars.

Response. The SBOE disagreed and determined that the reference to the clouds and stars as examples was appropriate.

Comment. Two hundred and fifty-eight teachers commented that a student expectation in Grade 1 should be expanded to include characteristics of day and night.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(C) in Grade 1 to include characteristics of day and night.

Comment. Two hundred and fifty-eight teachers commented that in Grade 1, asking students to "demonstrate that air is all around us and observe that wind is moving air" was not developmentally appropriate.

Response. The SBOE disagreed and determined that this student expectation was reasonable and grade appropriate.

Comment. Ten administrators and two university/college staff commented that a knowledge and skills statement in Grade 1 should be revised to read, "The student knows that the living environment is composed of relationships between organisms." The commenters stated that the reference to life cycles should be deleted from the proposed statement.

Response. The SBOE disagreed and determined that the language on life cycles was appropriate.

Comment. One teacher commented that aquariums/terrariums would be very expensive for every elementary classroom, though ideal.

Response. The SBOE disagreed and determined that the revised Grade 1 TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and fifty-eight teachers commented that the proposed TEKS in Grade 1 related to energy transfer through food chains was not developmentally appropriate.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that interdependence among living organisms in the Grade 1 TEKS was too complex.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Two teachers, nine administrators, and two university/college staff commented that the concept of organisms resembling their parents should be deleted from the Grade 1 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided fundamental life science information for students.

Comment. Nine administrators and two university/college staff suggested adding the word "many" to a Grade 1 student expectation so it reads, "compare ways that many young animals resemble their parents."

Response. The SBOE disagreed and determined that this student expectation was appropriate as written and did not need an additional descriptor.

Comment. One teacher commented that the word "chicken" should be removed from a student expectation in Grade 1 that addresses life cycles.

Response. The SBOE disagreed and determined that the student expectation provided examples, indicated by the phrase "such as," to allow flexibility in implementation at the local level.

Comment. One teacher commented that the use of the term "system" only in the life science area of the Grade 1 TEKS will lead to teacher misconceptions.

Response. The SBOE disagreed and determined that many recurring themes, such as systems, may be used in the earth science and physical science areas. The revised TEKS do not limit the theme of systems to be only used in the life science area.

Comment. Nine administrators and two university/college staff commented that a section in the Grade 2 introduction should be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient, appropriate, and did not need additional details.

Comment. Thirty-seven teachers, one administrator, two parents, and two community members commented that the last sentence of introduction paragraph (3) in Grade 2 should be revised to read, "Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time."

Response. The SBOE disagreed and determined that the recommended percentages of time for classroom and outdoor investigations in the revised TEKS were appropriate for Grade 2.

Comment. Eight administrators and two university/college staff commented that a section of the introduction in Grade 2 should be shifted to allow the time statement regarding classroom and outdoor investigation to stand alone, as follows: (4) Districts are encouraged to facilitate classroom and outdoor investigations for at least 60% of instructional time.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 2 TEKS was sufficient and appropriate as written.

Comment. Eight administrators and two university/college staff commented that a portion of the introduction in Grade 2 be edited to read, "demonstrate position, frame of reference, and a change in position and motion."

Response. The SBOE disagreed and determined that the introductory language, in which students are expected to "demonstrate a change in motion and position," was appropriate in clarity and rigor.

Comment. One teacher commented that the following language should be moved from the introduction to a knowledge and skills statement in the Grade 2 TEKS: "The student for at least 60% of instructional time conducts investigations in the classroom and outdoor investigations following home and school safety procedures."

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific

amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. One teacher commented that it was important to intentionally connect what scientists do with the science the students are learning.

Response. The SBOE disagreed and retained the student expectation, "describe what scientists do," which would not prohibit educators from making connections between what scientists do with the science students are learning.

Comment. One hundred and fifty-seven teachers commented that terrariums, aquariums, clocks, and collection nets should be deleted from the list of tools found in the Grade 2 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Ten teachers commented that the word "relative" should be removed from the student expectation in Grade 2 that reads, "classify matter by physical properties, including shape, relative mass, relative temperature, texture, flexibility, and whether material is a solid or liquid." The teachers also commented that "magnetism" should be added to this list of physical properties.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and provided sufficient examples of physical properties.

Comment. Two hundred and sixty teachers supported a student expectation in Grade 2 relating to classification of matter by physical properties.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Ten teachers commented that the phrase "heating and cooling" should be replaced with "the addition or reduction of heat" in Grade 2.

Response. The SBOE disagreed and determined that use of the term "heating and cooling" was appropriate for this grade level.

Comment. Two hundred and sixty teachers commented that the phrase "justify the selection of those materials based on their physical properties" was not developmentally appropriate for Grade 2.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Eight administrators and two university/college staff commented that a student expectation in Grade 2 should be replaced with, "demonstrate that everyday objects can use or produce light, heat, or sound energy."

Response. The SBOE disagreed and determined that the revised TEKS were clear and appropriate.

Comment. One teacher commented that a student expectation in Grade 2, "investigate the effects on an object by increasing or decreasing amounts of light, heat, and sound energy such as how the color of an object appears different in dimmer light or how heat melts butter" was not developmentally appropriate.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that a student expectation in Grade 2, "investigate the effects on an object by increasing or decreasing amounts of light, heat, and sound energy such as how the color of an object appears different in dimmer light or how heat melts butter" was unclear.

Response. The SBOE disagreed and determined that the revised TEKS were clear and appropriate.

Comment. One administrator commented that magnets are repeated and that scaffolding was appropriate; repeating content was not in the Grade 2 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and presented magnets in a developmentally sequenced manner.

Comment. Ten teachers commented that magnetism should be moved from the section on force, motion, and energy to the section on matter and energy.

Response. The SBOE disagreed and determined that the revised TEKS included appropriate placement of references to magnetism.

Comment. One teacher commented that the phrase, "tracing the changes in the position of an object over time" needs more clarification in the Grade 2 student expectation.

Response. The SBOE disagreed. Definition of the standards should occur during curriculum development and professional development.

Comment. Eight administrators and two university/college staff commented that a student expectation in Grade 2 should be revised to read, "trace the changes in the position relative to a frame of reference of an object. . ."

Response. The SBOE disagreed and determined that the revised TEKS were clear and specific.

Comment. Five teachers commented that a student expectation in Grade 2 should be edited to read, "compare patterns of movement of objects such as sliding, rolling, spinning, and balancing."

Response. The SBOE disagreed and determined that the addition of the concept of "balancing" in the revised TEKS was not necessary.

Comment. Two hundred and sixty teachers commented that a student expectation in Grade 2 should be edited to read, "observe and describe rocks by size, texture, and color."

Response. The SBOE agreed and took action to amend subsection (b)(7)(A) in Grade 2 as recommended.

Comment. One teacher questioned how the average student would really observe a boulder and compare it to rocks as described in the Grade 2 TEKS.

Response. The SBOE agreed and took action to amend the language in subsection (b)(7)(A) in Grade 2 to delete the references to boulders and gravel.

Comment. Two hundred and sixty teachers commented that a student expectation in Grade 2, "distinguishing between natural and manmade resources" should be deleted.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Two hundred and sixty teachers commented that a student expectation in Grade 2 should be edited to read, "measure, record, and graph weather information including temperature, wind conditions, and cloud cover in order to identify patterns in the data."

Response. The SBOE disagreed and determined that the revised TEKS, including measuring precipitation, were grade level specific and attainable by the general student.

Comment. One teacher commented that the student expectation, "observe, describe, and record patterns caused by objects in the sky, including shadows and the appearance of the moon" may lead to the misconception that the phases of the Moon are caused by the Earth and needs to be clarified in the Grade 2 TEKS.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(D) in Grade 2 to read, "observe, describe, and record patterns of objects in the sky, including the appearance of the Moon."

Comment. Ten teachers commented that they would prefer a more clear explanation of how the shadows should be interpreted as phases of the Moon in the Grade 2 TEKS.

Response. The SBOE agreed and revised the student expectation in subsection (b)(8)(D) in Grade 2 to delete the reference to shadows.

Comment. Two hundred and sixty teachers commented that a student expectation in Grade 2 should be edited to read, "observe, describe, and record patterns caused by objects in the sky including the appearance of the Moon."

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(D) in Grade 2 to read, "observe, describe, and record patterns of objects in the sky, including the appearance of the Moon."

Comment. Two hundred and sixty-one teachers commented that a student expectation in Grade 2 should be edited to read, "identify factors in the environment including temperature that affect growth of living things."

Response. The SBOE disagreed and determined that this student expectation provided more details and examples regarding factors that affect growth and behavior.

Comment. Six administrators and two university/college staff suggested deleting the phrase "organisms resemble their parents" from the Grade 2 TEKS.

Response. The SBOE disagreed and determined that the phrase "organisms resemble their parents" was appropriate.

Comment. One administrator commented that the concept that organisms resemble parents should remain in the Grade 2 TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two hundred and sixty teachers commented that the word "unique" was not developmentally appropriate and should be deleted from the Grade 2 TEKS.

Response. The SBOE disagreed and determined that the language in the revised TEKS was clear and appropriate.

Comment. One teacher commented that the recurring themes in the Grade 3 introduction are patterns, relationships, and cycles. The teacher stated that there was no systems theme (explicitly) mentioned in the proposed TEKS.

Response. The SBOE disagreed. The introduction of the revised TEKS in Grade 3 does include systems as a recurring theme, in addition to patterns, cycles, models, change, and constancy.

Comment. Nine administrators and two university/college staff commented that the Grade 3 introduction be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient and appropriate.

Comment. Thirty-seven teachers, one administrator, two parents, and two community members commented that the last sentence of the Grade 3 introduction paragraph (3) be revised to read, "Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time."

Response. The SBOE disagreed and determined that the recommended percentages of time for classroom and outdoor investigations in the revised TEKS were appropriate.

Comment. Nine administrators and two university/college staff commented that the Grade 3 introduction be separated to allow the time statement to stand alone.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 3 TEKS was sufficient and appropriate as written.

Comment. One teacher commented that the statement, "The student for at least 60% of instructional time, conducts investigations in the classroom and outdoor investigations following home and school safety procedures," should be moved to a student expectation in the Grade 3 TEKS.

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. Two hundred and fifty-three teachers commented that maps are not aligned with other content area TEKS for Grade 3.

Response. The SBOE disagreed and determined that this student expectation was appropriate, reasonable, and attainable by the general student in Grade 3.

Comment. Two hundred and fifty-three teachers commented that hot plates are not safe and should be removed from the equipment list in Grade 3. Sound recorders, terrariums, and aquariums should also be deleted from the list of tools. Spring scales should be added to the list of tools in order to measure force.

Response. The SBOE agreed and took action to amend subsection (b)(4)(A) in Grade 3 to include spring scales. The SBOE disagreed with the removal of other items from the list and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE also took action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and fifty-three teachers commented that in Grade 3, gloves are not needed since there are no hot plates listed on the equipment list.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Ten teachers commented that in Grade 3, the phrase "heating and cooling" should be replaced with "the addition or reduction of heat."

Response. The SBOE disagreed and determined that the reference to "heating and cooling" was appropriate for this grade level.

Comment. One teacher commented that the concept of vibrations producing sound was not represented anywhere in elementary TEKS.

Response. The SBOE disagreed and determined that the coverage of energy, including sound energy, through exploring and differentiating forms of energy, was appropriate in the revisions to the elementary TEKS.

Comment. Two hundred and fifty-three teachers commented that in Grade 3, mechanical energy should be included in the forms of energy that students explore.

Response. The SBOE agreed and took action to amend subsection (b)(6)(A) in Grade 3 to include mechanical energy. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two hundred and fifty-two teachers commented that in Grade 3, a student expectation on position and motion should be changed to "show work being done" and that the example of "pulleys and wagons" should replace "cars."

Response. The SBOE agreed and took action to amend subsection (b)(6)(B) in Grade 3 to include the phrase "show work being done" and examples of "pulleys and wagons." The SBOE also took action to approve additional changes to respond to other comments.

Comment. Eleven administrators and two university/college staff commented that in Grade 3, the concept of position relative to a frame of reference should be included.

Response. The SBOE disagreed and determined that the student expectation relating to position and motion needed no additional clarification with respect to frame of reference.

Comment. One teacher commented that magnetism was already covered in the "matter and energy" strand and does not need to be repeated in the "force, energy and motion" strand of the TEKS in Grade 3, and that the concepts of "push or pull, equilibrium, electricity" should be included, as recommended in national standards.

Response. The SBOE disagreed and determined that the revised TEKS appropriately address the concept of magnetism in two strands of Grade 3. The SBOE also disagreed that additional descriptors were needed.

Comment. One teacher commented that in Grade 3, the formation of soil by weathered rock and decomposing organic matter was probably too abstract for students.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that in Grade 3, students were perhaps not ready to cognitively comprehend the Earth/Moon/Sun system.

Response. The SBOE agreed and took action to amend subsection (b)(8) in Grade 3 to read, "The student knows there are recognizable patterns in the natural world and among objects in the sky."

Comment. Two hundred and fifty-three teachers commented that in Grade 3, students should, "use models that demonstrate the characteristics and relationship of the planets and the Sun, Earth and Moon system including orbit and position in order to align astronomy concepts."

Response. The SBOE agreed and took action to amend subsection (b)(8) in Grade 3 to add another student expectation as paragraph (8)(D) that reads, "identify the planets in Earth's solar system and their position in relation to the Sun." In addition, the use of models to represent the natural world was already included the revised TEKS.

Comment. One teacher commented that in Grade 3, the genetic connection is an important concept and that the statement "organisms resemble their parents" should remain in the TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two hundred and fifty-two teachers commented that in Grade 3, the concept, "students explore some characteristics of organisms are inherited and some behaviors are learned from the environment" was not developmentally appropriate.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student. The SBOE took action to clarify this language by amending subsection (b)(10)(B) in Grade 3 to include, "behaviors are learned in response to living in a certain environment."

Comment. Two hundred and fifty-three teachers commented that in Grade 3, students should learn the life cycle of the frog, rather than the mealworm.

Response. The SBOE agreed and took action to amend the language in subsection (b)(10)(C) in Grade 3 to replace mealworms with frogs.

Comment. One teacher commented that in Grade 4, the focus of the introduction in subsection (a) seemed to be earth science with some life science. The new emphasis placed on the use of models to understand systems was very helpful.

Response. The SBOE agreed. The SBOE also took additional action to respond to other comments.

Comment. A community representative commented that in Grade 4, the introduction in paragraph (1) should be replaced and recommended text relating to scientific hypotheses and theories.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient and appropriate.

Comment. Nine administrators and two university/college staff commented that in Grade 4, the introduction in paragraph (3) should be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient and appropriate.

Comment. Nine administrators and two university/college staff commented that the instructional time recommendation should stand alone in the introduction of the Grade 4 TEKS.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 4 TEKS was sufficient and appropriate as written.

Comment. Thirty-seven teachers, one administrator, two parents, and two community representatives commented that the last sentence in the introduction in paragraph (3) of Grade 4 TEKS should read, "Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time."

Response. The SBOE disagreed and determined that the recommended percentages of time for classroom and outdoor investigations in the revised TEKS were appropriate.

Comment. Two teachers and two university/college staff commented that the fourth introductory paragraph needs to be restored in the Grade 4 TEKS, to read, "All grade levels should address the physical, natural, and living environments." The commenters recommended that subsequent paragraphs that begin with "within the natural environment" and "within the living environment" be renumbered. The commenters further suggested the addition of a new statement to read, "within the physical environment, students learn to measure physical properties of matter and to compare and contrast a variety of mixtures and solutions" followed by "the students explore different forms of energy."

Response. The SBOE disagreed and determined that the introduction to the revised TEKS was sufficient and appropriate.

Comment. Nine administrators and two university/college staff suggested the deletion of a sentence in the introduction of the Grade 4 TEKS that reads, "The students will design an experiment to test the effect of force on objects."

Response. The SBOE disagreed and determined that the revised TEKS introduction was adequate and appropriate.

Comment. One teacher suggested editing a knowledge and skills statement in Grade 4 related to conducting scientific investigations to read, "Scientific investigation and reasoning. The student, for at least 50% of instructional time, conducts investigations in the classroom."

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. One teacher commented that in Grade 4, repeated investigations are ideal but are not well aligned with mathematics, because averaging did not occur until middle school.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Ten teachers questioned whether there was accuracy in evaluating product claims found in labels and if some type of experiment was needed related to the knowledge and skills statement in the Grade 4 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were clear as written. Further definition of the standards should occur during curriculum development and professional development.

Comment. One teacher commented that in Grade 4, a "stream table" was alarming.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and tool lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and sixty-one teachers suggested revisions to the student expectation in Grade 4 relating to the equipment and supply list, including the removal of hot plates and the addition of the spring scales.

Response. The SBOE agreed and took action to amend subsection (b)(4)(A) in Grade 4 to include spring scales. The SBOE disagreed with the removal of other items from the list and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE also took action to approve the proposal with additional changes in response to other comments.

Comment. Two hundred and sixty-one teachers expressed opposition to the inclusion of gloves on the list of supplies in the Grade 4 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. The SBOE did, however, take action to approve the proposal with additional changes in response to other comments.

Comment. Five teachers suggested that the phrase "heating and cooling" be replaced with "addition or reduction of heat" in the Grade 4 TEKS.

Response. The SBOE disagreed and determined that use of the term "heating and cooling" was appropriate for this grade level.

Comment. Five teachers suggested that clarification of "compare and contrast a variety of mixtures and solutions such as rocks in sand or water, or sugar water" in the Grade 4 TEKS was needed.

Response. The SBOE disagreed and determined that the revised TEKS contained adequate examples of varieties of mixtures and solutions.

Comment. A teacher commented that students struggled with the terms "mixtures," "solutions," "insulators," and "conductors," and questioned the readiness of students to understand these concepts in the Grade 4 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were clear and attainable by the general student.

Comment. Two teachers, 11 administrators, and two university/college staff suggested revision of a knowledge and skills statement in the Grade 4 TEKS to read, "The student knows that energy exists in many forms and can be observed in cycles, patterns, and systems."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6) in Grade 4 to replace the word "occurs" with the word "exists." The SBOE also took action to approve additional changes to respond to other comments.

Comment. One administrator suggested that a student expectation in the Grade 4 be revised to read, "explore the uses of energy including light, thermal, electrical, and sound energy."

Response. The SBOE agreed and took action to amend subsection (b)(6)(A) in Grade 4 so that "electricity" was changed to "electrical." The SBOE disagreed with the suggested change from "differentiate among forms of" to "explore the uses of" and

determined that the level of rigor in the revised TEKS was appropriate.

Comment. Two teachers commented that a student expectation in Grade 4 be revised to read, "differentiate among forms of energy and how they travel."

Response. The SBOE disagreed and determined that the revised TEKS, which expect students to differentiate among forms of energy, was appropriate and rigorous.

Comment. Eleven teachers commented that a student expectation in Grade 4 be edited to read, "differentiate among forms of energy, including sound, electricity, light and heat/thermal." The teachers also requested clarification of the term "differentiate."

Response. The SBOE agreed and also took action to amend the language in subsection (b)(6)(A) in Grade 4 to read, "differentiate among forms of energy, including mechanical, sound, electrical, light, and heat/thermal." The SBOE determined that further clarification of the term "differentiate" was not needed.

Comment. Two hundred and sixty-one teachers requested the addition of the term "mechanical" to a Grade 4 student expectation so that it reads, "differentiate among forms of energy including mechanical, sound, electricity, light, and heat/thermal."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6)(A) in Grade 4 to read, "differentiate among forms of energy, including mechanical, sound, electrical, light, and heat/thermal."

Comment. One teacher suggested the replacement of the term "electricity" with "electrical" when referring to forms of energy.

Response. The SBOE agreed and took action to amend the language in subsection (b)(6)(A) in Grade 4 to read, "differentiate among forms of energy, including mechanical, sound, electrical, light, and heat/thermal."

Comment. Eleven administrators and two university/college staff suggested that a student expectation in Grade 4 be revised to read, "investigate the flow of electricity in a circuit."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in scope and rigor.

Comment. One teacher requested the deletion of the Grade 4 student expectation, "design an experiment to test the effect of force of an object."

Response. The SBOE disagreed with the deletion, but took action to clarify the language in subsection (b)(6)(D) in Grade 4 to read, "design an experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism."

Comment. Two teachers requested examples for clarification of the Grade 4 student expectation, "design an experiment to test the effect of force of an object."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6)(D) in Grade 4 to read, "design an experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism."

Comment. One teacher suggested editing a portion of the student expectation, "design an experiment to test the effect of force of an object," by replacing the last part of the sentence to read, "effect of force on an object."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6)(D) in Grade 4 to read, "design an

experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism."

Comment. Two hundred and sixty-one teachers commented that a student expectation in Grade 4 be edited to read, "observe an experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism."

Response. The SBOE agreed with the suggestion to add examples to subsection (b)(6)(D) in Grade 4 such as a push or a pull, gravity, friction, or magnetism. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Ten teachers questioned the placement of a student expectation related to life sciences within a broader knowledge and skill statement related to earth sciences in the Grade 4 TEKS.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(A) in Grade 4 to read, "measure and record changes in weather and make predictions using weather maps, weather symbols, and a map key."

Comment. A teacher, ten administrators, and two university/college staff commented that a student expectation in Grade 4 be edited to read, "identify seasonal weather patterns that result from changes in air temperature, wind patterns, and precipitation."

Response. The SBOE disagreed with the language in the comment, but took action to amend the language in subsection (b)(8)(A) in Grade 4 to read, "measure and record changes in weather and make predictions using weather maps, weather symbols, and a map key."

Comment. Two hundred and sixty-one teachers commented that a student expectation in Grade 4 be revised to read, "measure and record changes in weather and make predictions using weather maps."

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(A) in Grade 4 to read, "measure and record changes in weather and make predictions using weather maps, weather symbols, and a map key."

Comment. Two hundred and sixty-one teachers requested that a student expectation in Grade 4 be edited to read, "explain the role of the sun as a major source of energy for Earth and understand its role in the creation of the wind and in the water cycle."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in wording and rigor.

Comment. Ten teachers requested more specificity in a student expectation in Grade 4 related to the appearance of the Moon and patterns of change in shadows.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(C) in Grade 4 to read, "collect and analyze data to identify sequences and predict patterns of change in shadows, tides, seasons, and the observable appearance of the Moon over time."

Comment. A teacher commented that in Grade 4, implied reference to phases of the moon was confusing, and a section should be deleted from a student expectation to add clarity.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(C) in Grade 4 to read, "collect and analyze data to identify sequences and predict patterns of change

in shadows, tides, seasons, and the observable appearance of the Moon over time."

Comment. An administrator commented that in Grade 4, if "reflection of sunlight" refers to albedo, it was not developmentally appropriate for fourth grade students.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(C) in Grade 4 to read, "collect and analyze data to identify sequences and predict patterns of change in shadows, tides, seasons, and the observable appearance of the Moon over time."

Comment. Two hundred and sixty-one teachers commented that a Grade 4 student expectation should be revised to read, "collect and analyze data to identify sequences and predict patterns of change in the Sun, Earth and Moon including reflection of sunlight, tides, and in the observable appearance of the Moon over time."

Response. The SBOE agreed to add a reference to tides in subsection (b)(8)(C) in Grade 4, but disagreed with other edits and determined that the clarity and level of rigor was appropriate in the revised TEKS.

Comment. Eleven administrators and two university/college staff suggested revision of a Grade 4 student expectation to read, "investigate that most producers need sunlight, water, and carbon dioxide to make their own food, while consumers are dependent on other organisms for food."

Response. The SBOE agreed and took action to amend the language in subsection (b)(9)(A) in Grade 4 to read, "investigate that most producers need sunlight, water, and carbon dioxide to make their own food, while consumers are dependent on other organisms for food."

Comment. Eleven administrators and two university/college staff requested the addition of a new Grade 4 student expectation that reads, "Predict how changes in the ecosystem affect the food web such as a fire in a forest."

Response. The SBOE disagreed and determined that the organization of the revised TEKS was clear and appropriate.

Comment. One teacher and an administrator suggested the insertion of the phrase "organisms resemble their parents" into the Grade 4 knowledge and skill statement, "The student knows that organisms undergo similar life processes and have structures that help them survive within their environment."

Response. The SBOE disagreed and determined that the revised knowledge and skill statement was appropriate in rigor and depth.

Comment. One teacher commented that a Grade 4 student expectation related to exploring how adaptations enable organisms to survive in their environment should be more aligned with the Grade 3 and 5 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in alignment in regards to adaptations of organisms.

Comment. Two hundred and sixty-one teachers suggested the revision of a Grade 4 student expectation to read, "explore, illustrate and compare life cycles in living organisms, such as butterflies, beetles, mealworms, radishes or lima beans."

Response. The SBOE disagreed and determined the list of example organisms in the revised TEKS was clear and appropriate.

Comment. One teacher noted that the Grade 5 introductory statement lists just three "environments" in which investigations occur.

Response. The SBOE disagreed and determined that the revised TEKS allow flexibility in conducting investigations and addressing concepts in a variety of ways.

Comment. One university/college staff person suggested that the Grade 5 introduction be replaced and recommended text relating to scientific hypotheses and theories.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient and appropriate as written.

Comment. Thirteen administrators and two university/college staff commented that in Grade 5, the introduction in paragraph (3) should be replaced and recommended text relating to the study of elementary science.

Response. The SBOE disagreed and determined that the introduction of the revised TEKS was sufficient and appropriate.

Comment. Thirty-seven teachers, one administrator, two parents, and two community representatives requested that the percentage of time spent in classrooms and outdoor investigations should be raised to 80% in all elementary grades.

Response. The SBOE disagreed and determined that the recommended percentages of time for classroom and outdoor investigations in the revised TEKS were appropriate.

Comment. Thirteen administrators and two university/college staff suggested that the time statement for instruction in the introduction should stand alone and that districts should be encouraged to facilitate classroom and outdoor investigations for at least 50% of instructional time.

Response. The SBOE disagreed and determined that the introduction to the revised Grade 5 TEKS was sufficient and appropriate.

Comment. One teacher suggested the revision of a knowledge and skills statement in the Grade 5 TEKS to read, "Scientific investigation and reasoning. The student, for at least 50% of instructional time, conducts investigations in the classroom."

Response. The SBOE disagreed. Under statute, TEC, §28.002(j), the SBOE may only require, by rule, a specific amount or percentage of time in a secondary science course that must be laboratory instruction.

Comment. Fifteen teachers commented that a student expectation in Grade 5 be revised to read, "describe, plan and implement descriptive investigations asking well-defined questions, and selecting and using appropriate equipment and technology."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and grade level specific.

Comment. Thirteen teachers and two university/college staff suggested the revision of a Grade 5 student expectation to read, "describe, plan and implement comparative investigations asking well-defined questions, formulating testable hypotheses, and selecting and using appropriate equipment and technology and implement simple experimental investigations testing one variable, asking well-defined questions, formulating testable hypotheses and selecting and using appropriate equipment and technology."

Response. The SBOE disagreed and determined that the revised TEKS were clear and complete.

Comment. Fourteen teachers and two university/college staff suggested expanding a Grade 5 student expectation into three parts addressing descriptive, comparative, and experimental investigations.

Response. The SBOE disagreed and determined that the revised TEKS were clear and complete.

Comment. Two teachers suggested revision of a Grade 5 student expectation to read, "draw conclusions from simple graphs, tables."

Response. The SBOE disagreed and determined that the revised TEKS contained a reasonable expectation related to the construction of graphs.

Comment. One teacher requested the replacement of "drawing or developing a model" with "evaluate models" in a Grade 5 student expectation.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and rigorous.

Comment. One teacher commented that a Grade 5 student expectation that asks a student to draw or develop a model was "ridiculous" and wondered how this student expectation should be taught.

Response. The SBOE disagreed and determined that the revised TEKS were clear and appropriate.

Comment. Two hundred and fifty teachers requested revision of a Grade 5 student expectation related to drawing or developing a model to read, "represent the natural world using models and identify their limitations."

Response. The SBOE disagreed and determined that the revised TEKS were clear and appropriate.

Comment. One teacher commented that a Grade 5 student expectation related to drawing or developing a model presumes a lot regarding the child's readiness to turn concrete objects into abstract representations, and that most children this age should not be expected to visualize the mechanisms of technologies they cannot concretely explore.

Response. The SBOE disagreed and determined that the revised TEKS were clear and attainable by the general student.

Comment. One teacher requested that specific scientists be listed for classroom study in a Grade 5 student expectation.

Response. The SBOE disagreed. The revised TEKS can be further defined during curriculum development and professional development.

Comment. Two hundred and fifty teachers suggested revisions to the student expectation in Grade 5 relating to the equipment and supply list, including the addition of spring scales.

Response. The SBOE agreed and took action to amend subsection (b)(4)(A) in Grade 5 to include spring scales. The SBOE also took action to approve the proposal with additional changes in response to other comments.

Comment. Twelve administrators and two university/college staff requested revision of a Grade 5 knowledge and skills statement to read, "the student knows that energy exists in many forms and can be observed in cycles, patterns, and systems."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate.

Comment. Two hundred and fifty-four teachers requested revision of a Grade 5 student expectation to read, "explore energy including mechanical, light, thermal electrical, and sound energy."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6)(A) in Grade 5 to read, "explore the uses of energy, including mechanical, light, thermal, electrical, and sound energy."

Comment. Twelve administrators and two university/college staff suggested the insertion of the words, "differentiate and explore among" uses of energy in a student expectation.

Response. The SBOE disagreed and determined that the revised TEKS were clear and rigorous.

Comment. Twelve administrators and two university/college staff requested revision of a Grade 5 student expectation to read, "demonstrate that light travels in a straight line until it strikes an object and is reflected or travels from one medium to another and it is refracted."

Response. The SBOE disagreed and determined that the revised TEKS were clear.

Comment. Two hundred and fifty teachers requested the addition of a Grade 5 student expectation, "design an experiment that tests the effect of force on an object."

Response. The SBOE agreed and took action to amend the language in subsection (b)(6) in Grade 5 to add another student expectation as paragraph (6)(D) that reads, "design an experiment that tests the effect of force on an object."

Comment. Twelve administrators and two university/college staff requested revision of a Grade 5 knowledge and skills statement to read, "The student knows that there are recognizable patterns in the natural world and the solar system."

Response. The SBOE disagreed and determined that in response to public comments, adjustments had been made to include reference to planets at earlier grade levels.

Comment. Two teachers requested inclusion of the planets in the solar system and their relationship to the Sun in the Grade 5 TEKS.

Response. The SBOE disagreed and determined that in response to public comments, adjustments had been made to include reference to planets at earlier grade levels.

Comment. One teacher commented that a student expectation in Grade 5 related to weather and climate should be moved to Grade 4.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in their coverage of the earth sciences.

Comment. Two hundred and fifty teachers requested revision of a Grade 5 student expectation to read, "explain how the Sun and ocean interact in the water cycle and in weather patterns."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in the coverage of natural patterns among the Sun, Earth, and Moon system.

Comment. Twelve administrators and two university/college staff requested deletion of the phrase "approximately every 24 hours" from the Grade 5 student expectation that reads,

"demonstrate that Earth rotates on its axis once approximately every 24 hours causing the daylight/night cycle and the apparent movement of the Sun across the sky."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in the coverage of natural patterns among the Sun, Earth, and Moon system.

Comment. Two hundred and fifty teachers requested revision of a Grade 5 student expectation to read, "demonstrate that the Earth rotates on its axis once approximately every 24 hours causing the day/night cycle and revolves around the Sun every 365 days."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in scope and depth.

Comment. Two hundred and fifty-one teachers expressed support for the insertion of a new student expectation in the Grade 5 TEKS, "identify and compare the physical characteristics of the Sun, Earth and Moon."

Response. The SBOE agreed and took action to amend the language in subsection (b)(8) in Grade 5 to add another student expectation as paragraph (8)(D) that reads, "identify and compare the physical characteristics of the Sun, Earth, and Moon."

Comment. Twelve administrators and two university/college staff requested the addition of a Grade 5 student expectation, "identify the planets in our solar system and their position in relation to the Sun."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in the coverage of the planets with the changes made to the proposed revised TEKS in earlier grades.

Comment. One teacher commented that there are too many TEKS in Grade 5 and that all of the TEKS related to organisms and environments should be deleted.

Response. The SBOE disagreed and determined that the reference to organisms and environments in the revised TEKS was appropriate and related to significant student understandings.

Comment. One teacher requested the insertion of the phrase, "organisms resemble their parents" in a Grade 5 knowledge and skills statement related to organisms.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in scope and depth.

Comment. Nine teachers commented that they strongly support content-based TEKS revisions in middle school.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the SBOE should adopt the middle school TEKS as presented by the writing team with the changes added to the TEKS document adopted at first reading in January 2009.

Response. The SBOE disagreed. The SBOE took action to approve changes to respond to other comments.

Comment. One teacher commented that instruction related to simple machines is not found in any grade level in middle school.

Response. The SBOE disagreed and determined that the revised TEKS address simple machines adequately in elementary grades.

Comment. One teacher commented that a focus on interactions and equilibrium of body systems needs to be added to the middle school TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered life science objectives satisfactorily.

Comment. One teacher commented that the middle school TEKS are "an inch deep and a mile wide."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in depth of content coverage.

Comment. Two teachers commented that they do not like the new structure and prefer spiraling of the content in middle school.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided more focus and depth of content for each year of study than the 1998 TEKS.

Comment. Three teachers questioned inclusion of the statement "students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable" in the middle school TEKS.

Response. The SBOE disagreed and determined that the revised TEKS will help students understand science with more depth and with more applications to situations outside the science classroom.

Comment. One teacher commented that organisms and the environment are general to Grades 5-8, and asked why there was an emphasis on physical science in Grade 7, life science in Grade 7, and earth science in Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that a grade level focus at the middle school level would allow students to learn about organisms and the environment at each of the grade levels, with the primary emphasis on the life sciences at Grade 7.

Comment. Two teachers commented on the financial considerations and asked if the state will provide funds to purchase necessary equipment and supplies for middle school.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. At this time, each district is responsible for purchasing classroom/lab instructional materials.

Comment. One teacher commented that Grade 6 students are not functioning at the intelligence level that these TEKS require.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Five teachers commented that the new middle school TEKS are less vague and allow for a greater understanding of content.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the new middle school TEKS because they have greater depth and students will no longer be bored and frustrated.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed opposition to the new middle school TEKS and wondered if any research was completed on the effectiveness of the 1998 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided more focus and depth of content for each year of study. An effectiveness study of the 1998 science TEKS was not completed.

Comment. One teacher commented that due to the increasing complexity of content and concepts it seems reasonable to go back to year-long focus strands in middle school.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed opposition to the proposed changes in middle school that tend to go back to the past and expressed a preference for the broader integration that currently exists because the district has spent years aligning the curriculum so that each successive year builds on what was taught the previous year.

Response. The SBOE disagreed and determined that although the revised TEKS focus on physical science at Grade 6, life science at Grade 7, and earth science at Grade 8, the TEKS still provide opportunities for integration across the science disciplines. This arrangement provides more depth in the core content of each science discipline.

Comment. One teacher commented that a student who is being tested in Grade 8 over concepts taught in Grade 6 may have a disadvantage in meeting standards which have not been spiraled across the Grade 7 and 8 levels.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and since the state assessments are built upon the TEKS, adjustments will be made to assessments as appropriate based on the revised TEKS.

Comment. One teacher commented that Prekindergarten-Grade 8 students need a strong foundation in scientific claims and evidence, performing inquiry-based investigations, problem solving, and critical thinking in order to achieve success in their high school science courses. In addition, the commenter indicated that it is critical for teachers to have a clear specific framework that vertically aligns across grade levels and allows students to build upon sound scientific concepts and skills needed to compete in a global society.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One administrator expressed support for moving toward 40% labs in middle school.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One administrator commented that the new middle school TEKS represent excellent work because it is now easier to see what each grade level is expected to teach. The commenter recommended that the current textbooks for middle schools be aligned to the proposed TEKS to ensure all students have a consistent tool for research/reading/studying as well as the same teacher curriculum, e.g., model lessons for each student expectation.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments. The

recommendations are outside the scope of the current rule action.

Comment. One teacher commented on a preference for the spiraled curriculum that has been in place over the past 10 years in middle school.

Response. The SBOE disagreed. The revised TEKS were appropriate and focus on physical science at Grade 6, life science at Grade 7, and earth science at Grade 8. The TEKS still provide opportunities for spiraling across the science disciplines. This arrangement provides more depth in the core content of each science discipline.

Comment. One teacher commented that the new middle school TEKS are less vague and should allow for a greater understanding of living systems without re-teaching material.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that ecology and environmental science should be removed from Grades 6 and 8 and added to Grade 7 instead.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided reasonable life science integration at the Grade 6 and 8 levels.

Comment. One teacher commented that the integrated method of teaching middle school science should stay for several reasons: (1) it is better for high school preparation; (2) it allows the students to build a solid science foundation; (3) it currently has teaching resources; and (4) any change will place too much pressure on Grade 8 students to recall material for TAKS testing.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided more focus and depth of content coverage for each year of study. Since the state assessments are built upon the TEKS, adjustments will be made to assessments as appropriate based on the revised TEKS.

Comment. One teacher expressed support for the new Grade 6 science TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that some of the Grade 6 student expectations are not developmentally appropriate. For example, calculating density at Grade 6 is too advanced. Also, it would be more beneficial for Grade 6 students to understand the parts of an atom and the differences between physical and chemical properties. The concepts of molecules and compounds should be taught in Grade 7 or 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and attainable by the general student.

Comment. One teacher commented that the new Grade 6 TEKS removed the focus on surface and ground water and that this action should not have occurred. The teacher also commented that there are many current news stories that would support the continued inclusion of surface and ground water information.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided adequate coverage of the environment at the different middle school grade levels.

Comment. One teacher commented that there is no genetics component in the revised Grade 6 TEKS and referenced advancements in genetics (cloning, stem cell research, etc.) as reasons to include this as an important area to be introduced at the Grade 6 level.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that the life science focus, including genetics, was more appropriate for the Grade 7 level.

Comment. One teacher commented that genetics are only covered in Grade 7 TEKS and proposed either an introduction to the subject in Grade 6 or a continuation of the subject in Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that the life science focus, including genetics, was more appropriate for the Grade 7 level.

Comment. One teacher commented that the Grade 6 TEKS do not include genetics content and also lack an instructional focus on surface and ground water.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that the life science focus, including genetics, was appropriate for the Grade 7 level. In addition, surface and ground water are included at the Grade 8 level.

Comment. An administrator commented that the Grade 6 content is too difficult; too much information is presented; and questioned if students have the ability to handle density, compounds and mixtures, decimals and metrics, and computers in the lab.

Response. The SBOE disagreed and determined that the revised Grade 6 TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented on the need to remove ecology and environmental science from Grade 6 and move the content to Grade 7.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that the ecology and environmental science content in the Grade 6 TEKS would be retained.

Comment. One teacher commented that the new Grade 6 science TEKS do not match Grade 6 mathematics TEKS when referring to manipulating formulas (which is in Grade 7 mathematics).

Response. The SBOE disagreed and determined that the level of mathematics required in the revised TEKS was appropriate, reasonable, and attainable by the general Grade 6 student.

Comment. One teacher expressed support for the new "earthy" types of science in Grade 6, however, questioned whether Grade 6 students are functioning at the intellectual level required for the amount of material that the students must cover such as matter and energy; compounds, mixtures and density; using metrics and decimals; and computer usage when many students do not have access to computers on a regular basis.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and attainable by the general Grade 6 student.

Comment. Two teachers and one university/college staff person questioned whether Grade 6 students are able to learn about

physical science before high school and indicated that Grade 6 would be the foundational year for chemistry and physics, leaving 3-4 years (Grades 7-10) before the students actually take these courses. The commenter suggested earth science in Grade 6 and physical science for Grade 8 because students are not required to know earth science to graduate.

Response. The SBOE disagreed and determined that the focus on the physical sciences at the Grade 6 level was appropriate.

Comment. One teacher commented that the TEKS for Grades 6-8 science do not mention simple machines and that the study of simple machines is the basis of modern physics. The comment also indicated that students who were not successful in many other areas of science really blossomed when investigating and learning about simple machines.

Response. The SBOE disagreed and determined that the revised TEKS address simple machines adequately in elementary grades.

Comment. One teacher questioned the addition of a sentence in the Grade 6 TEKS that states that students know that some questions are outside the realm of science because they deal with phenomena that are not scientifically accurate.

Response. The SBOE disagreed and determined that the revised TEKS will help students understand science with more depth and with more applications to situations outside the science classroom.

Comment. Thirteen administrators and two university/college staff requested that a Grade 6 introductory statement be replaced and recommended text relating to scientific, descriptive, and comparative investigations.

Response. The SBOE disagreed about adding all the introductory language suggested in the comments but did take action to add language in subsection (b)(2)(A) in Grade 6 that addresses comparative investigations.

Comment. An administrator commented that the Grade 6 TEKS should not include the word "compounds" and the words "chemical reactions" because Grade 6 students will not yet have been introduced to atomic structure, bonding or valence electrons, therefore, it is inappropriate to introduce compounds or chemical reactions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered physical science objectives satisfactorily.

Comment. One teacher commented that the Grade 6 TEKS should omit the words, "including calculations and measurements."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen administrators and two university/college staff suggested that student expectations in Grade 6 include, "design and implement comparative and experimental investigations."

Response. The SBOE agreed and took action to amend the language in subsection (b)(2)(A) in Grade 6 to address comparative investigations.

Comment. One teacher commented that the verb "know" is a concern and would require a rubric indicating the level of "knowing."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One administrator commented on a Grade 6 student expectation for students to "recognize that a limited number of the many known elements comprise the largest portion of a solid." The administrator commented that this integration of earth science and physical science was random and isolated.

Response. The SBOE disagreed and determined that the inclusion of this student expectation in the TEKS was appropriate.

Comment. One teacher requested the omission of a statement in the Grade 6 TEKS or a change to read, "differentiate between symbols and compound formulas."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen teachers requested replacement of a student expectation in the Grade 6 TEKS with the statement, "recognize that elements combine to form compounds such as H_2O , $NaCl$ and CO_2 ."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One administrator expressed the belief that an existing statement should be omitted from the Grade 6 TEKS or changed to, "identify element symbols and compound formulas."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher asked for a definition of "the most basic level" that appears in the Grade 6 TEKS as part of the statement, "differentiate between elements and compounds on the most basic level."

Response. The SBOE determined that clarification of the standards should occur during curriculum development and professional development. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. One administrator commented that a Grade 6 student expectation that references "production of gas" and "color change" was a common result from both a physical and chemical change. The administrator commented that the indicators cited go beyond a physical change.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity. The references to "production of gas" and "color change" are normally associated with a chemical reaction.

Comment. Fifteen teachers requested that a Grade 6 student expectation relating to formation of compounds be revised to reference the formation of new substances.

Response. The SBOE agreed and took action to amend the language in subsection (b)(5)(D) in Grade 6 to read, "identify the formation of a new substance by using the evidence of a possible chemical change such as production of a gas, change in temperature, production of a precipitate, or color change."

Comment. Two teachers, ten administrators, and two university/college staff requested the addition of a new student expectation to the Grade 6 TEKS that reads, "recognize that elements combine to form compounds, such as water, carbon dioxide and sodium chloride."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and did not need another student expectation on chemical equations in Grade 6.

Comment. One teacher, ten administrators, and three university/college staff requested an addition to the Grade 6 TEKS for students to "identify that organic compounds contain carbon and other elements such as hydrogen, oxygen, phosphorus, nitrogen, or sulfur."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and did not need another student expectation on organic compounds in Grade 6.

Comment. One teacher commented that calculating density is highly unnecessary and too abstract for Grade 6 students.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in mathematical computations and rigor.

Comment. Fourteen teachers requested a substitution in the Grade 6 TEKS to read, "classify substances based on physical properties including volume and density."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen teachers requested the deletion of the term "logical" from the Grade 6 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were written with appropriate language and clarity.

Comment. Three teachers, 13 administrators, and two university/college staff requested revisions to a Grade 6 student expectation relating to changes caused by unbalanced forces.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8)(B) in Grade 6 to read, "identify and describe the changes in position, direction, and speed of an object when acted upon by unbalanced forces."

Comment. Fourteen teachers requested the deletion of the Grade 6 student expectation requiring students to calculate average speed using distance and time measurements. The teachers commented that this student expectation should be moved to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in the placement of physical science concepts in the middle school standards.

Comment. Twelve teachers and two university/college staff requested adding a new Grade 6 student expectation relating to planes and pulleys and the amount of force to move an object.

Response. The SBOE agreed and took action to amend the language in subsection (b)(8) in Grade 6 to add another student expectation as paragraph (8)(E) that reads, "investigate how inclined planes and pulleys can be used to change the amount of force to move an object."

Comment. Four teachers, 13 administrators, and two university/college staff requested a new Grade 6 student expectation to read, "investigate and describe applications of Newton's law of inertia, law of force and acceleration, and law of action-reaction such as in vehicle restraints, sports activities, amusement park rides, and rocket launches."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and did not need an additional student expectation in physical science.

Comment. Ten administrators and two university/college staff requested an edit to a Grade 6 knowledge and skills statement to read, "Force, motion, and energy. The student knows that energy occurs in many forms and can change forms."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. Fourteen teachers requested an edit of a Grade 6 knowledge and skills statement to read, "the student knows that there is a relationship among force, motion, and energy."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. One administrator commented that the Grade 6 TEKS should keep the statements related to the Law of Conservation of Energy and the forms and types of energy.

Response. The SBOE agreed and retained language related to conservation of energy and forms of energy in the revised TEKS.

Comment. Nine teachers and one university/college staff person requested the deletion of the Grade 6 student expectation that requires the student to, "classify rocks as metamorphic, igneous, or sedimentary by the processes of their formation" and suggested that it be moved to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily.

Comment. One teacher commented that the Grade 6 student expectation related to identifying the major tectonic plates, including Eurasian, African, Indo-Australian, Pacific, North American, and South American seems redundant to a similar student expectation in Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily.

Comment. Ten teachers commented and requested a deletion of the Grade 6 student expectation describing how plate tectonics causes major geological events such as ocean basins, earthquakes, volcanic eruptions, and mountain building. The teachers stated that this student expectation could be moved to another grade level.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily.

Comment. One teacher commented that the Grade 6 student expectation describing how plate tectonics causes major geological events such as ocean basins, earthquakes, volcanic eruptions, and mountain building seems to be the same as a student expectation in Grade 8 and should be clarified.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily.

Comment. One teacher commented that the term "understand" is not easily applied in the Grade 6 classroom and may require a rubric indicating the "level of understanding."

Response. The SBOE disagreed. Teaching of the standards should be determined during curriculum development and professional development. The SBOE took action to approve the proposal with additional changes in response to other comments.

Comment. Two teachers commented that the Grade 6 TEKS relating to the history and future of space exploration, including the types of equipment and transportation needed for space travel should be moved to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily throughout the middle school science standards.

Comment. Ten teachers requested that Grade 6 TEKS related to earth and space science include components of the solar system; characteristics of objects in the solar system that allow life to exist such as the proximity of the sun, presence of water, and composition of the atmosphere; identification of the accommodations, considering the characteristics of the solar system, that enable manned space exploration; and the history and future of space exploration, including the types of equipment and transportation needed for space travel.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered earth science objectives satisfactorily throughout the middle school science standards.

Comment. Ten teachers commented that the Grade 6 TEKS related to biotic parts of an ecosystem in which organisms interact and the levels of organization within an ecosystem, including organism, population, community, and ecosystem, should be moved into a newly developed student expectation.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need an additional student expectation in life science at the Grade 6 level.

Comment. Ten teachers requested that the topics related to organisms and environments; classifications into Domains and Kingdoms; cellular composition of organisms; prokaryotic and eukaryotic cells; taxonomic classifications of living organisms; and characteristics of organisms, including prokaryotic or eukaryotic, unicellular or multicellular, autotrophic or heterotrophic, and mode of reproduction be moved to Grade 7.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered life science objectives satisfactorily throughout the middle school science standards.

Comment. One teacher and one administrator commented that the Grade 6 topic regarding taxonomy is an important topic and noted that there will be a four-year gap before the topic will be taught again in biology.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered life science objectives satisfactorily throughout the middle school science standards.

Comment. One teacher commented that, in addition to organism interactions, Grade 6 students should be able to identify internal and external stimuli and responses as this changes the overall interactions in an ecosystem.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Ten teachers requested a new Grade 6 standard related to the relationship between organisms and environments, including these student expectations: observe and describe how different environments and biomes support different varieties of organisms; describe how biodiversity contributes to the sustainability of an ecosystem; describe the role of ecological succession after a natural disaster; describe biotic and abiotic parts of an ecosystem in which organisms interact; and diagram the levels of organization within an ecosystem including organism, population, community, and ecosystem.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and did not need an additional student expectation in life science at Grade 6.

Comment. One teacher expressed support for a Grade 7 curriculum that addresses the needs and interests of students and requested continued emphasis on the biological aspects of Grade 7 science. Response: The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that it is difficult to develop all of the Grade 7 concepts to a level of mastery such that the Grade 8 student will be in a better position to pass the Texas Assessment of Knowledge and Skills (TAKS) test.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in depth and were attainable by the general student. Assessments will be based on the adopted TEKS.

Comment. One teacher commented that since students begin to study the Periodic Table in Grade 6, this should also be included in the Grade 7 TEKS for continuity.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered physical science objectives satisfactorily throughout the middle school standards.

Comment. One teacher expressed support for the revisions to the Grade 7 TEKS which enable more effective coverage of the strands with a common theme of life science.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Thirteen administrators and two university/college staff requested that a Grade 7 introductory statement be replaced and recommended text relating to scientific, descriptive, and comparative investigations.

Response. The SBOE disagreed about adding all the introductory language suggested in the comments but did take action to add language in subsection (b)(2)(A) in Grade 7 that addresses comparative investigations.

Comment. One teacher commented that the Grade 7 TEKS should include descriptive investigations to explore new phenomena such as conducting surveys of organisms or measuring the abiotic components in a given habitat.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the Grade 7 introduction needed to address force and motion as it applies to machines. The teacher stated that the inclusion of equations related to Newton's Laws is essential in Grade 7.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen administrators and two community staff suggested that a Grade 7 student expectation related to scientific investigation and reasoning should be edited to add language relating to comparative investigations.

Response. The SBOE agreed and took action to amend the language in subsection (b)(2)(A) in Grade 7 to read, "plan and implement comparative and descriptive investigations by making observations, asking well-defined questions, and using appropriate equipment and technology."

Comment. One teacher commented that the Grade 7 TEKS related to collecting and recording data used the word "qualitative" and asked why the word "quantitative" was not used.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that teachers should not be told which models they must use in Grade 7 and that although all teachers use models, they should be used at the teacher's discretion and not just in life science.

Response. The SBOE disagreed and determined that the revised TEKS were of appropriate specificity.

Comment. One administrator disagreed with the need for tools such as test kits, collecting nets, and insect traps in Grade 7 science.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate science equipment and supplies lists.

Comment. One teacher commented that, "cycling of matter within living systems" is a broad concept and asked if the intent is to focus on decay of biomass.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered life science objectives satisfactorily. The "such as" statement (decay of biomass) is an optional example that may be used by teachers and that can be further clarified during professional development.

Comment. Fourteen teachers suggested that a Grade 7 student expectation be edited to read, "identify the role of decomposers in the cycling of matter within living systems, such as in the decay of biomass in a compost bin."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity. The intent of the TEKS was the cycling of matter within living systems and the decay of biomass was intended as an example only.

Comment. One teacher suggested that a Grade 7 student expectation be edited to read, "recognize some of the cycles that exist in science and their relationship between matter and energy, such as the water cycle, carbon dioxide/oxygen cycle, nitrogen cycle, lunar cycle, and the three types of rocks that exist on earth."

Response. The SBOE disagreed and determined that the revised TEKS addressed the cycling of matter and energy with clarity and included appropriate examples.

Comment. One administrator suggested that a Grade 7 student expectation that asks students to "diagram" the flow of energy be changed to "describe" or "explain."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Twelve administrators and two university/college staff suggested that a Grade 7 student expectation, "identify that organic compounds contain carbon and other elements such as hydrogen, phosphorus, nitrogen, or sulfur" be moved to Grade 6.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered physical science objectives satisfactorily throughout the middle school science standards.

Comment. One teacher suggested deleting the Grade 7 student expectation, "identify that organic compounds contain carbon and other elements such as hydrogen, phosphorus, nitrogen, or sulfur," or editing the student expectation to read, "identify by the compound formula that organic compounds. . . ."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One administrator commented that the Grade 7 TEKS requiring students to identify that organic compounds contain carbon and other elements is the only time the term "organic" is mentioned in middle school and it appears to be a random vocabulary term.

Response. The SBOE disagreed and determined that the revised TEKS used appropriate terminology.

Comment. One teacher commented that a Grade 7 student expectation on physical and chemical changes in the digestive system should be placed in biology. The teacher further indicated that Grade 7 needed more content in the chemistry section of the TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and provided more integration of life science with physical science at the middle school level. In addition, the SBOE determined that additional chemistry content was not needed in Grade 7.

Comment. One teacher commented that a Grade 7 student expectation, "recognize how large molecules are broken down into smaller molecules such as carbohydrates" is about compounds. The teacher also suggested that the student expectation should begin with, "identify that compounds are broken down. . . ."

Response. The SBOE disagreed and determined that the revised TEKS were specific and appropriate in clarity.

Comment. One teacher commented that the Grade 7 student expectation, "recognize how large molecules are broken down into smaller molecules such as carbohydrates" is too complex for students and should be deleted.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One administrator commented that the Grade 7 TEKS needed to emphasize physical science concepts related to force, motion, and energy. The administrator stated that this includes basic tools that do work and are parallel to the life science examples in the human body.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and covered physical science ob-

jectives satisfactorily throughout the middle school science standards.

Comment. Thirteen administrators and two university/college staff expressed the need to replace the proposed Grade 7 student expectation, "contrast situations where work is done with different amounts of force to situations where no work is done such as moving a box with a ramp and without a ramp, or standing still" with a student expectation that reads, "investigate how lever-type structures within the human body are related to work."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Two teachers commented that there is confusion with the Grade 7 student expectation that addresses when work is done. The teachers commented that when an object is moved, work is done; and when the object does not move, work is not done.

Response. The SBOE disagreed and determined that this student expectation was appropriate in clarity.

Comment. Fourteen teachers commented that a Grade 7 student expectation related to work should be edited to read, "investigate how inclined planes and first class levers allow the body to do work with less force."

Response. The SBOE disagreed and determined that this student expectation was appropriate in clarity.

Comment. One teacher questioned whether a Grade 7 student expectation related to work and force is referring to Newton's Laws.

Response. The SBOE determined that this student expectation was appropriate in clarity. Further clarification will be provided through professional development.

Comment. Thirteen administrators and two university/college staff commented that a Grade 7 student expectation should be replaced with, "illustrate the transformation of energy within an organism, such as the transfer from chemical to mechanical or thermal energy."

Response. The SBOE agreed and took action to amend the language in subsection (b)(7)(B) in Grade 7 to read, "illustrate the transformation of energy within an organism such as the transfer from chemical energy to heat and thermal energy in digestion."

Comment. Fourteen teachers commented that a Grade 7 student expectation should be replaced with, "illustrate the transformation of energy within an organism such as the transfer from chemical energy to heat and thermal energy."

Response. The SBOE agreed and took action to amend the language in subsection (b)(7)(B) in Grade 7 to read, "illustrate the transformation of energy within an organism such as the transfer from chemical energy to heat and thermal energy in digestion."

Comment. One teacher commented that the Grade 7 TEKS related to work and energy would be more beneficial if it included Newton's Laws and some equations.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Ten teachers commented that the Grade 7 TEKS related to organisms and environments should be moved to the Grade 8 and replaced with text relating to organisms and environments and domains and kingdoms.

Response. The SBOE disagreed and determined that the organization of the revised TEKS was appropriate.

Comment. Five teachers commented that the phrase "in ecoregions of Texas" should be deleted from the Grade 7 TEKS.

Response. The SBOE disagreed and determined that the revised TEKS include appropriate language.

Comment. One teacher asked whether all examples of weathering, erosion, and deposition in the Grade 7 TEKS only take place in the ecoregions of Texas.

Response. The SBOE determined that the revised TEKS are appropriate. Further clarification will be provided through professional development.

Comment. Ten teachers commented that an introductory statement in Grade 7 should be moved to Grade 6 and be revised with text relating to organisms and environment.

Response. The SBOE disagreed and determined that the organization of revised TEKS was appropriate.

Comment. One teacher commented that the focus on using school grounds to teach Grade 7 science needs to be kept intact.

Response. The SBOE disagreed and determined that the revised Grade 7 TEKS do not prohibit teachers from using school grounds for science investigations.

Comment. Five teachers commented that a Grade 7 student expectation should read, "observe and describe how different environments, including biomes, support different varieties of organisms."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity when addressing environments and biomes.

Comment. Nine teachers commented that all Grade 7 TEKS related to the relationship between organisms and the environment should be moved to Grade 6.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and determined that concepts such as biomes, biodiversity, and ecological succession were appropriately placed at the Grade 7 level.

Comment. Fourteen teachers commented that the Grade 7 TEKS related to organisms and environments should be edited and recommended text relating to living organisms.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. One teacher expressed opposition to a Grade 7 student expectation being changed from "ecosystem" to "microhabitat." The teacher commented that the term ecosystem is better because there are more examples to use.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not prevent a teacher from using examples to illustrate an ecosystem.

Comment. Five teachers commented that a Grade 7 student expectation should be edited to read, "describe the role of ecological succession after a natural disaster."

Response. The SBOE disagreed and determined that the student expectation was appropriate in clarity.

Comment. Thirteen administrators and two university/college staff commented that a Grade 7 student expectation should be edited to read, "observe, record, and describe the role of ecological succession of a garden with weeds or a natural disaster."

Response. The SBOE disagreed and determined that the student expectation was appropriate in clarity and did not need an additional example.

Comment. Ten teachers commented that several Grade 7 student expectations related to organisms should be moved to a new section of the TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriately sequenced in Grade 7.

Comment. Five teachers commented that the term "in a bulb" should be deleted from a Grade 7 student expectation that reads, "explain variation within a population or species by comparing external features, behaviors, physiology of organisms that enhance their survival such as migration, hibernation, or storage of food in a bulb."

Response. The SBOE disagreed and determined that the student expectation included appropriate specificity.

Comment. Fourteen teachers commented that a Grade 7 student expectation should be revised to add the genus species name to the Galapagos Medium Ground Finch (*Geospiza fortis*).

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Ten teachers commented that a Grade 7 student expectation related to the identification of some changes in genetic traits should be moved to a new section of the TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriately sequenced in Grade 7.

Comment. One administrator commented that a Grade 7 student expectation related to organisms and environments is too broad.

Response. The SBOE disagreed and determined that the student expectation was appropriate in specificity and in clarity.

Comment. Thirteen administrators and two university/college staff commented that a Grade 7 student expectation should be edited and recommended text relating to adaptations.

Response. The SBOE agreed and took action to amend the language in subsection (b)(12)(A) in Grade 7 to read, "investigate and explain how internal structures of organisms have adaptations that allow specific functions such as gills in fish, hollow bones in birds, or xylem in plants."

Comment. One teacher commented that examples related to internal structures of organisms in the Grade 7 TEKS do not need to be limited to life science.

Response. The SBOE disagreed and determined that the revised TEKS in Grade 7 were more focused than Grade 6 or 8 on the life sciences and that examples in life sciences were appropriate.

Comment. Thirteen teachers and two university/college staff commented that a Grade 7 student expectation should be edited to read, "identify several main functions of the systems of the human organism, including the circulatory, respiratory, skeletal, muscular, digestive, excretory, reproductive, integumentary, nervous, and endocrine systems."

Response. The SBOE disagreed and determined that the revised TEKS did not need the term "main" as a qualifier to a list of human body systems.

Comment. One administrator commented that a Grade 7 student expectation should be edited to read, "identify the main functions of the system. . . ." The administrator commented that the term "function" needs to be plural to indicate several functions for each body system.

Response. The SBOE disagreed and determined that the student expectation was appropriate in clarity and that the term "function" did not need to be plural.

Comment. Five teachers commented that a Grade 7 student expectation should be edited to read, "recognize that according to the cell theory all organisms are composed of cells which carry on similar functions, such as extracting energy from food to sustain life."

Response. The SBOE disagreed and determined that the student expectation was appropriate in clarity and did not need to be revised.

Comment. Fourteen teachers commented that a Grade 7 knowledge and skills statement should be edited to read, "The student knows that a living organism must be able to maintain internal balance in response to external and internal stimuli."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need to be revised.

Comment. One teacher asked whether the Grade 7 student expectation related to organisms and environments should include both an external and internal response in the statement.

Response. The SBOE determined that the revised TEKS would include both external and internal response to stimuli.

Comment. One teacher expressed concern over the Grade 7 TEKS and the lack of scaffolding about genetic inheritance prior to high school biology.

Response. The SBOE disagreed and determined that the revised TEKS adequately sequenced the life science content in middle school.

Comment. One administrator commented that it is imperative for students to understand that adaptations are due to genetic mutations and survival rates rather than environmental manipulation.

Response. The SBOE disagreed and determined that the revised TEKS addressed adaptations sufficiently.

Comment. Thirteen administrators and two university/college staff suggested that a Grade 7 student expectation be edited to specify reference to the nucleus.

Response. The SBOE agreed and took action to amend the language in subsection (b)(14)(C) in Grade 7 to read, "recognize that inherited traits of individuals are governed in the genetic material found in the genes within chromosomes in the nucleus."

Comment. One teacher expressed support for the Grade 8 TEKS that are more direct and relate to each other better.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the Grade 8 ecology and environmental TEKS should be moved to Grade 7.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of life science concepts throughout the middle school standards.

Comment. One teacher suggested that the solar system TEKS be moved from Grades 6 and 7 to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of earth/space science content in the middle school standards.

Comment. One teacher expressed support for the inclusion of weather and Earth/Moon systems in Grade 8.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that genetics is only covered in Grade 7. The teacher proposed that genetics be extended into the introduction in Grade 6 or be continued into Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of life science content, including genetics, in the middle school standards.

Comment. Thirteen administrators and two university/college staff suggested that a Grade 8 introductory statement be replaced and recommended text relating to scientific, descriptive, and comparative investigations.

Response. The SBOE disagreed with adding all the introductory language suggested, but did take action to add language in subsection (b)(2)(A) and (B) in Grade 8 that addresses comparative investigations.

Comment. One teacher suggested that a Grade 8 introductory statement be revised to indicate that a student "recognize" if an equation is balanced, not to actually "balance" the equation.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Ten administrators and two university/college staff suggested that a Grade 8 student expectation be edited to read, "design and implement comparative and experimental investigations. . . ."

Response. The SBOE agreed and took action to amend the language of subsection (b)(2)(A) and (B) in Grade 8 to include comparative investigations in Grade 8.

Comment. One administrator commented that anemometer and psychrometer are not appropriate tools for Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists.

Comment. Ten administrators and two university/college staff commented that a Grade 8 student expectation should be edited to read, "demonstrate and calculate how unbalanced forces (net forces) change the object's acceleration resulting in a change in speed or direction or both (speed and direction) of the object's motion."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Ten administrators and one university/college staff person commented that a Grade 8 student expectation should be edited to read, "differentiate among speed, velocity, and acceleration."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen teachers commented that a Grade 8 student expectation should be edited to read, "differentiate between velocity and acceleration."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Five teachers and ten administrators suggested moving a Grade 8 student expectation related to Newton's law of inertia to Grade 6.

Response. The SBOE disagreed and determined that the TEKS provided an appropriate sequence of physical science content, including Newton's law of inertia, in the middle school standards.

Comment. One teacher expressed support for the weather and Earth/Moon system to be included at the Grade 8 level.

Response. The SBOE agreed and took action to amend the language in subsection (b)(7)(C) in Grade 8 to read, "relate the position of the Moon and Sun to their effect on ocean tides."

Comment. Eight teachers, ten administrators, and two university/college staff suggested that a Grade 8 student expectation that reads, "relate the lunar cycles to its effect on ocean tides" be replaced with the statement, "relate the positions of the Moon and Sun to their effect on ocean tides."

Response. The SBOE agreed and took action to amend the language in subsection (b)(7)(C) in Grade 8 to read, "relate the position of the Moon and Sun to their effect on ocean tides."

Comment. One teacher commented that a Grade 8 student expectation that references nebulae suggests that it is a "different" component of the universe. The teacher stated that in reality, a nebula is a stage in a star's development.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that a Grade 8 student expectation on classifying galaxies may confuse students. The teacher stated that our galaxy is classified as a spiral galaxy (not disc-shaped) and it does appear like a disc from the "side."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. Ten administrators and two university/college staff commented that a Grade 8 student expectation that reads, "describe the historical development of evidence that supports plate tectonic theory" be replaced with the statement, "illustrate the historical development of evidence that supports plate tectonic theory."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Nine teachers commented that a Grade 8 student expectation that reads, "relate plate tectonics to the formation of crustal features" be replaced with the statement, "illustrate how plate tectonics causes major geological events, such as ocean basins, earthquakes, volcanic eruptions, and mountain building."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need specific examples of crustal features.

Comment. One teacher commented that Grade 8 students do not need topographic maps and satellite views to identify land

features and predict how they were shaped by erosion and weathering.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and the use of topographic maps and satellite views were reasonable tools for students to use in the classroom.

Comment. Nine teachers suggested moving a student expectation that reads, "classify rocks as metamorphic, igneous, or sedimentary by the processes of their formation" from Grade 6 to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of earth science content, including rocks, in the middle school standards.

Comment. Nine teachers suggested moving a student expectation that reads, "analyze the effects of weathering, erosion, and deposition on the environment" from Grade 7 to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of earth science content in the middle school standards.

Comment. Nine teachers suggested moving a student expectation that reads, "predict and describe how the different types of catastrophic events, such as floods, hurricanes, or tornadoes impact ecosystems" from Grade 7 to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of earth science content, including catastrophic events, in the middle school standards.

Comment. One administrator commented that the teaching of genetics in Grade 8 must be a continued theme in life science and must be included when exploring how environmental changes affect organisms and the traits in subsequent populations.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. One teacher suggested moving all Grade 8 TEKS related to organisms and environments to Grade 7.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of life science content, including organisms and environments, in the middle school standards.

Comment. Nine teachers suggested deleting all Grade 8 TEKS related to organisms and environments because they are too complex for students.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Fourteen teachers suggested adding, the word "polluted" to further describe the runoff in the statement, "recognize human dependence on ocean systems and explain how human activities such as runoff, artificial reefs, or use of resources have modified these systems."

Response. The SBOE disagreed and determined that the revised TEKS were clear and did not need additional language.

Comment. Nine teachers suggested moving a student expectation that reads, "model the effects of human activity on ground

water and surface water in a watershed" from Grade 7 to Grade 8.

Response. The SBOE disagreed and determined that the revised TEKS provided an appropriate sequence of earth science content, including watersheds, in the middle school standards.

Comment. One teacher expressed support for an emphasis on empirical data and science as a means to investigate the natural world in high school.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the proposed high school TEKS that were more detailed than the previous TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Four teachers and 738 community members expressed support for inclusion of the strengths and weaknesses language in the proposed TEKS.

Response. The SBOE disagreed and took action to replace the phrase "strengths and weaknesses" with new language that reads ". . . examining all sides of the scientific evidence. . ." in subsection (b)(3)(A) in Grades 3-8 and in subsection (c)(3)(A) in all high school courses.

Comment. Five teachers and 105 community members expressed opposition to inclusion of the strengths and weaknesses language in the proposed TEKS.

Response. The SBOE agreed and took action to include new language that reads, ". . . examining all sides of the scientific evidence. . ." in subsection (b)(3)(A) in Grades 3-8 and in subsection (c)(3)(A) in all high school courses.

Comment. One teacher expressed support for including creationism in the proposed TEKS.

Response. The SBOE disagreed and did not take action relating to references to creationism.

Comment. Sixteen teachers, one parent, 124 community members, and 28 university/college staff expressed opposition to creationism in the proposed TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher and eight community members expressed support for the January 2009 SBOE amendments as written.

Response. The SBOE agreed and retained many of the amendments from the January meeting.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff expressed opposition to the January 2009 SBOE amendments as written.

Response. The SBOE agreed and removed some of the amendments from the January meeting, but retained many of the amendments.

Comment. One teacher commented that wetlands needed to be added to the list of aquatic environments in the proposed aquatic science TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and additional descriptors regarding wetlands were not needed.

Comment. One university/college staff person commented that the word "observational" should be added as a method of scientific investigation in the proposed astronomy TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and additional descriptors regarding scientific investigations were not needed.

Comment. Two university/college staff commented that students should, "understand the use" of the listed technology in astronomy. The commenters also stated that sextants could be deleted as they are not currently used in astronomy.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and astronomical technology referenced in the revised TEKS were only examples.

Comment. One teacher commented that a student expectation in the proposed astronomy TEKS should be revised to read, "observe and record the apparent movement of the sun during the day and the moon during the night."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need to be revised.

Comment. One teacher commented that the reference to the zodiac should be deleted in the proposed astronomy TEKS.

Response. The SBOE disagreed and determined that the TEKS appropriately referenced constellations of the zodiac.

Comment. One teacher commented that a student expectation in the proposed astronomy TEKS should be revised to read, "Kuiper belt objects, including Pluto."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need additional language referencing Pluto.

Comment. Two university/college staff commented that a new student expectation should be added to the proposed astronomy TEKS that addresses the origin of the major bodies of the solar system.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and an additional student expectation regarding the origin of the major bodies of the solar system was not needed.

Comment. Two university/college staff commented that the word "estimates" should be changed to "measurements" in a phrase found in the proposed astronomy TEKS. The commenters stated that measurements have moved beyond crude estimates to measurements of high precision for the age of the universe.

Response. The SBOE disagreed and determined that the revised TEKS appropriately used the term "estimate."

Comment. Two university/college staff commented that "theories" of the fate of the universe should be used rather than "hypotheses" in the proposed astronomy TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and that the language regarding hypotheses was accurate.

Comment. One teacher commented that students should "recognize" ground-based technology rather than "analyze" ground-based technology in the proposed astronomy TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in verb choice.

Comment. One teacher commented that more specific information on plants should be added to the proposed biology TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that additional information on plants was not needed.

Comment. One university/college staff person commented that the history of science discovery, especially DNA, is needed in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that additional information on the history of DNA discovery is not needed.

Comment. One teacher commented that the scope of the proposed biology TEKS is too large and looked like Advanced Placement (AP) Biology.

Response. The SBOE disagreed and determined that the TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One university/college staff person expressed a need to include human population dynamics, and the consequence of ever-increasing human populations, in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the TEKS were appropriate in scope and addressed human population dynamics in a reasonable manner.

Comment. Fourteen teachers and two university/college staff suggested that a new introduction be included in the proposed biology, chemistry, and physics TEKS. The commenters' introduction provided extensive detail on descriptive, comparative, and experimental investigations.

Response. The SBOE disagreed and determined that the introductions in the revised TEKS were appropriate in clarity and did not need a more extensive explanation of scientific inquiry.

Comment. Twelve administrators and two university/college staff commented that students in biology need to plan and implement descriptive, comparative, and experimental investigations, including asking well-defined questions, formulating testable hypotheses in comparative and experimental studies, and selecting equipment and technology.

Response. The SBOE agreed and took action to amend the language in subsection (c)(2)(E) in biology to read, "plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology."

Comment. One teacher commented that because of financial strains, the proposed biology TEKS should delete data collecting probes, gel electrophoresis apparatus, micropipettes, and camera from the equipment list.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. At this time, each district is responsible for purchasing classroom/lab instructional materials.

Comment. One teacher commented that the term "equivalent" should be used instead of "such as" in the proposed biology TEKS equipment list.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. At this time, each district is responsible for purchasing classroom/lab instructional materials.

Comment. Twelve administrators and two university/college staff commented that students in biology should evaluate the impact of scientific research on society and the environment and describe the connection between biology and future careers.

Response. The SBOE disagreed and did not revise the student expectation as suggested. However the SBOE did take action to amend subsection (c)(3) in biology to add another student expectation as paragraph (3)(F) that reads, "research and describe the history of biology and contributions of scientists."

Comment. Six administrators and two university/college staff commented that factors influencing cell differentiation are numerous and complex. The commenters stated that the proposed biology TEKS as written are more appropriate for a PhD dissertation than a biology classroom.

Response. The SBOE disagreed and determined that the TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Six administrators and two university/college staff commented that non-Mendelian genetics in the proposed biology TEKS is too vague and covers too many areas. The commenters stated that more specificity is needed.

Response. The SBOE disagreed and determined that the revised TEKS were specific and were appropriate in clarity in regard to non-Mendelian genetics.

Comment. Six administrators and two university/college staff commented that the regulation of gene expression in the proposed biology TEKS is too specific for high school and should be deleted.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not delete information regarding gene expression.

Comment. One teacher commented that biology students should know, rather than describe, various DNA techniques, and also include cloning and stem cell research.

Response. The SBOE disagreed and determined that the verb choice in regard to DNA techniques in the revised TEKS was appropriate in clarity and rigor.

Comment. Seven teachers, 220 community members, and 38 university/college staff expressed support for evolution in the proposed biology TEKS.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Seven community members expressed opposition to evolution in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the revised TEKS provided appropriate coverage of evolution.

Comment. Two teachers and two university/college staff commented that the term "analyze and evaluate" needs to be re-

placed with "analyze" for each student expectation in the proposed biology TEKS evolutionary theory section.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate" in the revised TEKS pertaining to evolutionary theory was more specific and appropriate in clarity.

Comment. Two university/college staff commented that the term "analyze and evaluate" needs to be replaced with "understand" for each student expectation in the proposed biology TEKS evolutionary theory section.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate" in the revised TEKS pertaining to evolutionary theory was more specific and appropriate in clarity.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff commented that the term "analyze and evaluate" needs to be replaced with "identify" for each student expectation in the proposed biology TEKS evolutionary theory section.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate" in the revised TEKS pertaining to evolutionary theory was more specific and appropriate in clarity.

Comment. One teacher commented that the anatomical, molecular, and developmental aspects of common ancestry in the proposed biology TEKS do not need to be included.

Response. The SBOE disagreed and determined that the revised TEKS were more specific and were appropriate in clarity.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff expressed opposition to the amendment language "sufficiency or insufficiency of common ancestry" in the biology TEKS.

Response. The SBOE agreed and took action to remove the "sufficiency or insufficiency of common ancestry" language from subsection (c)(7)(B) in biology. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two university/college staff commented that natural selection produces change in populations, not individuals. They requested that "describe the sufficiency" be deleted in the proposed biology TEKS.

Response. The SBOE agreed and took action to remove the language "describe the sufficiency" from subsection (c)(7)(B) in biology. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that "sufficiency or insufficiency of common ancestry" is opening the door to creationism/intelligent design in the proposed biology TEKS.

Response. The SBOE agreed and took action to remove the language "sufficiency or insufficiency of common ancestry" from subsection (c)(7)(B) in biology.

Comment. Thirteen administrators and two university/college staff commented that "sufficiency or insufficiency of common ancestry" and the term "sudden appearance" should be eliminated in the proposed biology TEKS.

Response. The SBOE agreed that the "sufficiency or insufficiency of common ancestry" language should be removed and took action to amend subsection (c)(7)(B) in biology to remove the language. In regard to the phrase "sudden appearance," the SBOE determined that the phrase was acceptable and retained it in subsection (c)(7)(B) in biology.

Comment. One teacher commented that the term "evidence" should substitute for "sufficiency or insufficiencies" in the proposed biology TEKS. Response: The SBOE disagreed and removed the "sufficiency or insufficiencies" language from subsection (c)(7)(B) in biology. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that "sufficiency or insufficiency of common ancestry" contradicts the student expectation that provides evidence for common ancestry in the proposed biology TEKS.

Response. The SBOE agreed and took action to remove the "sufficiency or insufficiency of common ancestry" language from subsection (c)(7)(B) in biology. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff commented that the amendment language "analyze and evaluate how" should be replaced with "describe" in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate" in the revised TEKS was appropriate in clarity and rigor.

Comment. One teacher commented that the amendment language "analyze and evaluate how" should be replaced with "recognize" in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate how" in the revised TEKS was appropriate in clarity and rigor.

Comment. One teacher commented that the amendment language "analyze and evaluate how" should be replaced with "understand" in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate how" in the revised TEKS was appropriate in clarity and rigor.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff commented that the amendment language "analyze and evaluate" should be replaced with "recognize" in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the verb choice "analyze and evaluate" in the revised TEKS was appropriate in clarity and rigor.

Comment. One teacher and eight community members commented that the amendment language "analyze and evaluate" should be retained in the proposed biology TEKS.

Response. The SBOE agreed. The SBOE retained the verb choice "analyze and evaluate" in the revised TEKS.

Comment. Two university/college staff commented that students in biology should recognize the effects of other evolutionary mechanisms including genetic drift, gene flow, mutation, and recombination.

Response. The SBOE disagreed and determined that the proposed TEKS were appropriate in rigor and that additional evolutionary mechanisms did not need to be addressed in the standards.

Comment. Twelve administrators and two university/college staff commented that students in biology should compare char-

acteristics of taxonomic groups including currently recognized kingdoms.

Response. The SBOE disagreed and determined that the proposed TEKS were appropriate in rigor and specificity.

Comment. Twelve administrators and two university/college staff commented that students in biology should identify and investigate the role of enzymes as biological catalysts.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need additional information on the role of enzymes in biology.

Comment. One teacher commented that the biological systems are composed of multiple levels, therefore, it would be too ambiguous in the proposed biology TEKS. The teacher commented that the original wording was better.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and content.

Comment. Twelve administrators and two university/college staff commented that the intention of "levels of organization" in the proposed biology TEKS is unclear. The commenters asked whether this was a reference to cells, tissues, organisms, or a larger system.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity with respect to "levels of organization."

Comment. Twelve administrators and two university/college staff commented that "such as" examples need to be included in the student expectation that reads, "investigate and analyze how organisms, populations, and communities respond to external factors."

Response. The SBOE disagreed and determined that the revised TEKS were more specific, less repetitive, and appropriate in clarity without examples provided.

Comment. Twelve administrators and two university/college staff commented that students in biology should analyze the flow of energy and the cycling of matter through trophic levels using various models, including food chains, food webs, and ecological pyramids.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in specificity, clarity, and rigor.

Comment. One teacher, eight administrators, and two university/college staff commented that flow of matter should include the water cycle, in addition to the carbon and nitrogen cycles that are referenced in the proposed biology TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need to address the water cycle in the flow of matter.

Comment. Four teachers commented that Texas needs more conceptual chemistry that relates to the everyday citizen.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. Five teachers commented that there are too many calculations in the proposed chemistry TEKS.

Response. The SBOE disagreed and determined that the calculations in the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that the mathematics level is too high in chemistry.

Response. The SBOE disagreed and determined that the mathematics level in the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented on the "crazy expectations" for students in chemistry. The teacher commented that this will lead to more dropouts of students and teachers.

Response. The SBOE disagreed and determined that the student expectations in the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher expressed support for the revisions in chemistry. The teacher commented that the emphasis on mathematics problem solving is appropriate.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the proposed chemistry TEKS because they are more detailed than the 1998 TEKS.

Response. The SBOE agreed that the revised TEKS are more detailed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the streamlined content in the proposed chemistry TEKS which made it more manageable.

Response. The SBOE agreed that the revised TEKS are more manageable. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the proposed chemistry TEKS are very clear, concise, and tell the teacher exactly what to teach.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that the proposed chemistry TEKS are on a level too high for the majority of her students. The teacher stated that her non-college bound students would be left behind.

Response. The SBOE disagreed and determined that the content level of the revised TEKS was appropriate, reasonable, and attainable by the general student.

Comment. Three teachers commented that there was too much content in the proposed chemistry course.

Response. The SBOE disagreed and determined that the content level of the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that there was not a student expectation in chemistry that addressed the idea of equilibrium (Le Chatelier's Principle) and what affects rates of reactions and that information on this topic should be included.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need additional content in equilibrium and rates of reactions.

Comment. One teacher commented that calculation of a pH in chemistry was beyond the mathematics level of students. The

teacher commented that this type of calculation is found in Algebra II.

Response. The SBOE disagreed and determined that the level of mathematics calculations in the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that the proposed chemistry TEKS cover too much material and students will not learn content in depth. The teacher commented that there are also too many calculations in the chemistry TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in content coverage and attainable by the general student. In addition, the level of mathematics calculations in the revised TEKS were reasonable and attainable by the general student.

Comment. One teacher expressed support for the detail in the proposed chemistry TEKS. The teacher commented that the vagueness of the current chemistry TEKS was frustrating.

Response. The SBOE agreed that the revised TEKS contained appropriate specificity and detail. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented that references to the Periodic Table in chemistry should have been changed to the Periodic Table of Elements.

Response. The SBOE disagreed and determined that the revised TEKS appropriately reference the Periodic Table.

Comment. Twenty-seven administrators and four university/college staff commented that in the introduction, students in chemistry need to plan and implement descriptive, comparative, and experimental investigations, including asking well-defined questions, formulating testable hypotheses in comparative and experimental studies, and selecting equipment and technology.

Response. The SBOE disagreed and determined that the introduction was appropriate and provided sufficient information on scientific investigations.

Comment. One teacher commented on the need for teachers to teach ethics.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commented on the need not to teach ethics.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in addressing ethics.

Comment. One teacher commented that it will be difficult for schools to ensure students have adequate access to graphing calculators, computers, and probes in chemistry labs.

Response. The SBOE disagreed and determined that the equipment and supplies listed in the revised TEKS were appropriate and reasonable for the general student.

Comment. Two teachers and 15 administrators commented that electronic balances should be deleted from chemistry equipment list.

Response. The SBOE disagreed and determined that the revised TEKS contained appropriate equipment and supply lists. At this time, each district is responsible for purchasing classroom/lab instructional materials.

Comment. Four teachers commented that graphing calculators in chemistry are nice, but are not practical in every school. The teachers recommended that the reference to this tool should be deleted.

Response. The SBOE disagreed with deleting graphing calculators and determined that the revised TEKS were reasonable in regard to the equipment and supply lists.

Comment. One teacher commented that the list of equipment in chemistry should use the term "equivalent" instead of "such as."

Response. The SBOE disagreed and determined that the revised TEKS were reasonable in regard to the equipment and supply lists. The items found on the chemistry list are noted as optional and use the term "such as" and refer to optional items that can be used in the classroom.

Comment. One teacher commented that the chemistry TEKS should list the non-glass items first, after safety equipment.

Response. The SBOE disagreed and determined that the revised TEKS listed equipment appropriately.

Comment. One teacher commented that chemistry students should use critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom.

Response. The SBOE agreed. The chemistry knowledge and skills statement in subsection (c)(3) provides for critical thinking and problem solving. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three teachers commented that the chemistry TEKS should list names of scientists.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and allowed teachers flexibility to select scientists for their curriculum.

Comment. Sixteen administrators and two university/college staff suggested that the following student expectation be deleted from the chemistry TEKS: "identify extensive and intensive properties."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include information on extensive and intensive properties.

Comment. One teacher commented that a knowledge and skills statement in chemistry should be revised to read, "The student understands the historical development of the Periodic Table of Elements and can use the arrangement of elements to predict properties of elements in a chemical family or period."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and depth of understanding in regard to the Periodic Table of Elements.

Comment. Seventeen administrators and two university/college staff commented that a student expectation in chemistry should be revised to read, "use the Periodic Table to identify and explain the properties of transition metals, and of chemical families, including alkali metals, alkaline earth metals, halogens, and noble gases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed transition elements in the proper classification within chemical families.

Comment. Two university/college staff asked why some scientists are listed, while other scientists such as Curie are not listed in the focus of the atomic theory section in the proposed chemistry TEKS.

Response. The SBOE determined that the revised TEKS were appropriate in clarity and provided flexibility for teachers to select which scientists to study during the atomic theory unit.

Comment. One teacher expressed support for the students learning about the history of the current model of the atom in chemistry.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two teachers commented that a list of scientists' names should be included in the proposed chemistry TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and allowed teachers flexibility in selecting various scientists to study.

Comment. One teacher commented that it was awkward to primarily reference the Bohr model in the proposed chemistry TEKS. The teacher stated that the focus on the positions of electrons around the nucleus may lead to misconceptions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed many models of atomic theory, including the Bohr model.

Comment. Five teachers commented that the following student expectation in the proposed chemistry TEKS should be deleted: "understand the electromagnetic spectrum and the mathematical relationships between energy, frequency, and wavelength of light."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include information on the mathematical relationships between energy, frequency, and wavelength of light.

Comment. Seven teachers suggested that calculations be removed from a student expectation in the proposed chemistry TEKS that addresses the electromagnetic spectrum. The teachers suggested that the student expectation read, "understand the relationship between energy, frequency, and wavelength and how these relate to the electromagnetic spectrum."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include calculations related to the mathematical relationships between energy, frequency, and wavelength of light.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "understand the electromagnetic spectrum and the mathematical relationships between energy, frequency, and wavelength of light; relate the use of atomic emission spectra to historic development of atomic theory."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need additional information on emission spectra.

Comment. Eighteen teachers commented that the calculation in the proposed chemistry TEKS using Planck's constant was not necessary or appropriate for students. The teachers com-

mented that this type of calculation should be deleted or moved to physics or AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in mathematical computations and rigor.

Comment. Fourteen administrators and two university staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "understand the relationships among energy, frequency, and wavelength of light."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include information on the mathematical relationships between energy, frequency, and wavelength of light.

Comment. Two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "understand and use the appropriate analogy of the relationships among energy, frequency and wavelength."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include information on the mathematical relationships between energy, frequency, and wavelength of light.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use isotopic composition to explain average atomic mass of an element."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and addressed isotopic composition in a clear manner.

Comment. One teacher commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use isotopic composition and percent abundance data to calculate average atomic mass of an element."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and addressed isotopic composition in a clear manner.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "understand and use the appropriate analogy of the relationships among energy, frequency and wavelength."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and should include information on the mathematical relationships between energy, frequency, and wavelength of light.

Comment. One teacher commented that there was too much emphasis on metallic bonding in chemistry. The teacher commented that it would be better to emphasize ionic and covalent bonding in general chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor.

Comment. One teacher commented that chemistry students need to study characteristics of ionic and covalent bonding, not just metallic bonding.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed ionic and covalent bonding in an accurate manner.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "write the chemical formulas of common ionic compounds containing polyatomic ions, main group or transition metals, covalent compounds, acids, and bases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed the writing of chemical formulas in an accurate manner.

Comment. Three teachers commented that chemistry students should use a chart to reference polyatomic ions. The teachers commented that students should not be expected to memorize a list of polyatomic ions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not require students to memorize a list of polyatomic ions.

Comment. Five teachers commented that covalent compounds were too general in chemistry. The teachers suggested that binary covalent compounds be stated rather than covalent compounds.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need a specific reference to binary covalent compounds.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "construct and identify electron dot structures to illustrate ionic and covalent bonds."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed ionic and covalent bonds in an accurate manner.

Comment. One teacher commented that chemistry students should study Lewis valence electron dot structures.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need additional information on Lewis valence electron dot structures.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use metallic bonding to explain properties of metals such as thermal and electrical conductivity, malleability and ductility."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need additional information on metallic bonding.

Comment. Four teachers commented that metallic bonding concepts were not needed in a regular chemistry class and recommended deletion of this student expectation.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor.

Comment. One teacher commented that the proposed chemistry TEKS did not specify the Electron Sea Model theory.

Response. The SBOE agreed and determined that the revised TEKS were appropriate in clarity and did not need to specify the Electron Sea Model Theory in a student expectation.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "relate Valence Shell

Electron Pair Repulsion (VSEPR) theory to shapes of molecules including linear, trigonal planar or tetrahedral electron pair geometries."

Response. The SBOE disagreed and determined that the revised TEKS address the VSEPR theory with appropriate rigor.

Comment. Seven teachers commented that students did not need to predict molecular structures using VSEPR theory and recommended deletion. The teachers commented that this student expectation should be in an advanced chemistry class only.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should predict molecular structures using VSEPR theory.

Comment. One teacher commented that chemistry students should not study electron pair geometry. The teacher commented that this was not typically covered in a first year chemistry course.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should study electron pair geometry.

Comment. One teacher commented that factors that affect chemical reactions were in the previous chemistry TEKS and should still be included in the proposed chemistry TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need additional information on factors that affect chemical reactions.

Comment. Twelve administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "calculate percent composition and distinguish between empirical and molecular formulas."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should be able to calculate empirical and molecular formulas.

Comment. One teacher commented that the proposed chemistry TEKS should separate these ideas: know a formula, calculate percent composition, and then use percent composition information to determine an empirical and molecular formula.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should be able to calculate empirical and molecular formulas.

Comment. One teacher commented that chemistry students should be able to identify types of chemical reactions. The teacher commented that students should know these types of reactions: combustion, synthesis, decomposition, single replacement, and double replacement.

Response. The SBOE agreed. The types of reactions are embedded within the revised student expectations.

Comment. One teacher commented that chemistry students should first be able to identify the types of a reaction and then predict the products.

Response. The SBOE agreed. The types of reactions are embedded within the revised student expectations. The TEKS do not mandate an instruction plan for teaching concepts.

Comment. Seventeen teachers commented that stoichiometric calculations in chemistry were difficult and recommended that this student expectation be deleted.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should perform stoichiometric calculations.

Comment. Three teachers commented that stoichiometric calculations in chemistry were good and should remain.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Two university/college staff commented that chemistry students should understand that limiting reagents determine the products of chemical reactions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that additional information on limiting reagents was not needed.

Comment. Twelve administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "perform stoichiometric calculations including determination of mass relationships between reactants and products and calculation of percent yield." The commenters also recommended that this student expectation could be reworded to read, "understand limiting reagents determine the products of chemical reactions and apply to real world applications such as in an industrial setting."

Response. The SBOE disagreed and determined that the revised TEKS regarding stoichiometric calculations and chemical reactions were appropriate in clarity and rigor.

Comment. Twelve administrators and two university/college staff commented that chemistry students should understand the concept of a limiting reactant.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need an additional student expectation on limiting reactants.

Comment. Four teachers commented that calculations using gas laws were not appropriate for chemistry students. The teachers stated that students should know the relationships between volume, pressure, number of moles, and temperature.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should perform calculations using gas laws.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use kinetic molecular theory to predict changes in behavior of gases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and addressed kinetic molecular theory in an accurate manner.

Comment. One teacher commented that the proposed chemistry TEKS should add the Gay-Lussac law to the current list of gas laws, or replace them all with the Combined Gas Law.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed all of the gas laws in an accurate manner.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "describe and calculate the relationship between volume, pressure, number of moles, and temperature for an ideal gas, as described by

Boyle's Law, Charles' Law, Avogadro's Law, Dalton's Law of Partial Pressure and the Ideal Gas Law."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "recognize stoichiometric changes of mass and volume relationships between reactants and products for reactions involving gases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "recognize stoichiometric changes of mass and volume relationships between reactants and products for reactions involving gases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that a student expectation in the proposed chemistry TEKS should be edited to read, "distinguish between real and ideal gases as defined according to the postulates of the kinetic molecular theory."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that the section on solution chemistry was lengthy and very challenging.

Response. The SBOE disagreed and determined that the revised TEKS on solution chemistry were specific and appropriate in clarity and rigor.

Comment. Thirteen administrators and two university/college staff commented that chemistry students should be given the general rules regarding solubility, instead of the proposed language, "develop and use general rules" as they investigate properties of aqueous solutions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need to specify that students be given the general rules on solubility.

Comment. One teacher commented that chemistry students did not need to develop the rules of solubility if they were already printed on their End-of-Course exam chart.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and since the state assessments are built upon the TEKS, adjustments will be made to assessments as appropriate based on the revised TEKS.

Comment. Two teachers, 13 administrators, and two university/college staff commented that the following student expectation should be deleted from the proposed chemistry TEKS: "use molarity to calculate the dilutions of solutions."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in mathematical computations and rigor.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "distinguish between Arrhenius and Bronsted-Lowry definitions; and predict products in acid base reactions that form water."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that the following should be deleted from the proposed chemistry TEKS: "distinguishing between Arrhenius and Bronsted-Lowry acids and bases."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that if chemistry students were not predicting products in the chemical reactions objective, they should not be required to predict the products in acid/base reactions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that there was no "e" in the name "Lowry."

Response. The SBOE agreed and the spelling error in subsection (c)(10)(G) in chemistry was corrected.

Comment. One teacher commented that precipitation reactions and oxidation-reduction reactions should be moved to AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor for the general chemistry student.

Comment. One teacher commented that chemistry students may be confused when redox reactions are placed next to solution chemistry. The teacher asked if students need to know redox reactions.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Thirteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "define pH and use the hydrogen or hydroxide ion to determine the integer value pH of a solution."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Two teachers commented that pH calculations should be removed from chemistry. The teachers stated that students should only use pH to identify a substance as an acid or base.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should calculate pH in chemistry.

Comment. One teacher commented that degrees of dissociation in chemistry should be moved to PreAP or AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor for the general chemistry student.

Comment. One teacher commented that the focus in chemistry was on enthalpy, and that entropy was visibly missing.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in the coverage of fundamental chemistry content.

Comment. One teacher commented that kinetic and potential energy should be moved to AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students should learn about kinetic and potential energy.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "understand energy and recognize its forms including kinetic and potential."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed forms of energy in an accurate manner.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "apply the law of conservation of energy to process of heat transfer and use calorimetry to calculate the heat of a chemical process."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity.

Comment. One teacher commented that chemistry students should be able to classify reactions as exothermic or endothermic based on observations. The teacher commented that calculations were not needed.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students need to calculate the energy of exothermic and endothermic reactions.

Comment. One teacher commented that chemistry thermochemical reactions should be moved to AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that learning about thermochemical reactions was attainable by the general chemistry student.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use thermochemical reaction equations to classify energy changes that occur in chemical reactions and classify reactions as exothermic or endothermic."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that the calculations in thermochemical reactions should be removed.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students need to calculate the energy of thermochemical reactions.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "use calorimetry to measure and compare heat contained in chemical process."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed calorimetry in an accurate manner.

Comment. One teacher commented that chemistry calorimetry should be moved to PreAP or AP Chemistry.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that chemistry calorimetry was attainable by the general chemistry student.

Comment. One teacher commented that calculations in chemistry calorimetry should be removed.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that calculations in chemistry calorimetry were attainable by the general chemistry student.

Comment. Fourteen administrators and two university/college staff commented that the following should be deleted from chemistry: "use calorimetry to calculate the heat of a chemical process."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that calculations in chemistry calorimetry were attainable by the general chemistry student.

Comment. One teacher commented that the nuclear unit in chemistry was supposed to be a fun unit and wondered why nuclear applications were missing.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that the following be deleted from the proposed chemistry TEKS: "describe radioactive decay process in terms of balanced nuclear equations."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and that students need to balance nuclear equations.

Comment. One teacher questioned whether the radioactive decay process in chemistry included half-life concepts and calculations.

Response. The SBOE determined that the revised TEKS are appropriate in clarity. Further clarification of standards will occur during curriculum development and professional development.

Comment. Fourteen administrators and two university/college staff commented that a student expectation in the proposed chemistry TEKS should be edited to read, "compare fission and fusion reactions and evaluate their applications."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that there are too many TEKS in Earth and Space Science (ESS). The teacher recommended focusing only on Earth-Space systems.

Response. The SBOE disagreed and determined that the revised TEKS in ESS contained a reasonable number of student expectations that address a comprehensive course in Earth and space science.

Comment. Three teachers, one administrator, 18 parents, 377 community members, and 90 university/college staff commented that the ESS TEKS should be approved as written, with no revisions, changes, or amendments.

Response. The SBOE disagreed and amended student expectations prior to final adoption. The SBOE took action to approve additional changes to respond to public comments.

Comment. One teacher commented that the ESS TEKS should be approved as amended in January 2009.

Response. The SBOE disagreed and amended student expectations prior to final adoption. The SBOE took action to approve additional changes to respond to public comments.

Comment. One teacher commented that the ESS TEKS are written with appropriate rigor and that the course is a good capstone class.

Response. The SBOE agreed. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed concern about the removal of traditional concepts in Earth science in the proposed ESS TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor.

Comment. One teacher commented that the proposed ESS TEKS covered too much information and should follow "less is more" philosophy.

Response. The SBOE disagreed and determined that the revised TEKS in ESS contained a reasonable number of student expectations that address a comprehensive course in Earth and space science.

Comment. One university/college staff person commented that the word "observational" should be added as a method of scientific investigation, especially in the area of astronomy, which is addressed in the proposed ESS TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and addressed a variety of scientific investigations that are essential to ESS.

Comment. One teacher asked why the equipment list for ESS was included and suggested using the term "equivalent" instead of "such as."

Response. The SBOE disagreed and determined that the revised TEKS were reasonable in regard to the equipment and supply lists. The items found on the equipment list are only suggestions.

Comment. One teacher commented that astronomical observations in the proposed ESS TEKS should be covered in astronomy, not in ESS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate.

Comment. One teacher commented that the insertion of the words "differing theories" in ESS implies that there is another major scientific theory beyond the Big Bang Theory. The teacher stated that astrophysicists do not have differing theories for the origin of the universe. The teacher also stated that language for differing theories implies creationism and makes the language for science weaker.

Response. The SBOE disagreed and determined that the revised TEKS in regard to theories in ESS were appropriate in clarity and rigor. The SBOE did, however, take action to amend subsection (c)(4)(A) to read, "evaluate the evidence concerning the Big Bang model such as red shift and cosmic microwave background radiation and current theories of the evolution of the universe, including estimates for the age of the universe."

Comment. One teacher and two university/college staff commented that the following original language in the proposed ESS knowledge and skill statement should be retained: "The student knows that Earth's place in the solar system is explained by the solar nebular accretionary disk model." The commenters stated that this language was pedagogically correct and was the appropriate explanation for a high school class.

Response. The SBOE disagreed with the original language regarding solar nebular accretionary disk model and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Two university/college staff commented that by inserting "are thought to allow" into the ESS student expectation, "...kinetic heat of impact accretion, gravitational compression, and radioactive decay, which are thought to allow protoplanet differentiation..." is incorrect since there is no ambiguity or scientific question about the heat sources necessary for the Earth separating into different zones (mantle, outer core, inner core) during formation. The phrase "are thought to allow" implies incorrect and unnecessary doubt.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor. The SBOE did, however, take action to amend subsection (c)(5)(B) to read, "investigate thermal energy sources, including kinetic heat of impact accretion, gravitational compression, and radioactive decay, which are thought to allow protoplanet differentiation into layers."

Comment. Two university/college staff commented that an ESS student expectation should not include the reference to the "original hydrogen-helium" atmosphere. There is no evidence that the earth ever had such an atmosphere, as it was not massive enough to collect gas from the circumstellar disk.

Response. The SBOE agreed and took action to amend the language in subsection (c)(6)(A) in ESS to read, "analyze the changes of Earth's atmosphere that could have occurred through time from the original hydrogen-helium atmosphere, the carbon dioxide-water vapor-methane atmosphere, and the current nitrogen-oxygen atmosphere."

Comment. Two university/college staff commented that by inserting, "the evidence that the" into a proposed ESS student expectation, "evaluate the evidence that the Earth's cooling led to tectonic activity..." is unnecessary and implies a doubt about these processes that earth scientists do not share.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that a proposed ESS student expectation should ask students to "describe" radiometric dating methods, rather than "apply" radiometric dating methods.

Response. The SBOE disagreed. The SBOE, however, took action to amend the language in subsection (c)(7)(B) in ESS to read, "calculate the ages of igneous rocks from Earth and the Moon and meteorites using radiometric dating methods."

Comment. Two university/college staff commented that a proposed ESS student expectation suggests that students evaluate fossil types and assess arguments for and against universal common descent. The commenters stated that students should simply "understand" the fossil types and "understand the evidence of universal common descent based on the fossil record." The commenters also stated that there are no arguments against common descent in the fossil record.

Response. The SBOE disagreed but slightly changed the student expectation in subsection (c)(8)(A) in ESS to read, "analyze and evaluate a variety of fossil types, such as transitional fossils, proposed transitional fossils, fossil lineages, and significant fossil deposits with regard to their appearance, completeness, and alignment with scientific explanations in light of this fossil data."

Comment. One teacher commented that a proposed ESS student expectation should ask students to "describe" the motion history of tectonic plates, rather than "calculate" the motion history of tectonic plates.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher commented that a proposed ESS student expectation on the causes and history of eustatic sea level changes should be deleted as it is not appropriate for high school students.

Response. The SBOE disagreed and determined that the revised student expectation was appropriate in rigor.

Comment. One teacher commented that a proposed ESS student expectation on scientific hypotheses for the origin of life should be deleted as it is not appropriate for high school students.

Response. The SBOE disagreed and determined that the revised student expectation was appropriate in content and rigor.

Comment. One teacher commented that a proposed ESS student expectation on the dynamics of surface and groundwater movement should be deleted as it is not appropriate for high school students.

Response. The SBOE disagreed and determined that the revised student expectation was appropriate in rigor.

Comment. One university/college staff person commented that the history of science discovery, especially DNA, is needed in the proposed environmental systems TEKS. The commenters stated that science and biology are products of individual efforts and experiments through time.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and addressed fundamental environmental science content.

Comment. One university/college staff person commented that there is a need to include human population dynamics and the consequence of ever-increasing human populations in the proposed environmental systems TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and addressed fundamental environmental science content.

Comment. One teacher commented that the proposed environmental systems course should not be limited to Grades 11-12.

Response. The SBOE disagreed and determined that the grade requirements are appropriate.

Comment. One teacher commented that equipment list for environmental science may not be needed. The teacher suggested that the TEKS could say "or equivalent" instead of using the term "such as."

Response. The SBOE disagreed and determined that the revised TEKS were reasonable in regard to the equipment and supply lists. The items found on the environmental science list are only suggestions.

Comment. One teacher commented that the Integrated Physics and Chemistry (IPC) TEKS could clarify careers by adding the phrase "of scientists of those disciplines."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and addressed scientific careers in an accurate manner.

Comment. One teacher commented that the IPC TEKS should retain the original wording in the motion and force unit and also specify relevant examples that make the wording more specific.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. One teacher asked who would supply the moving toys for the IPC course.

Response. The SBOE determined that the revised TEKS listed appropriate and reasonable supplies and equipment to teach the IPC course. At this time, each district is responsible for purchasing classroom/lab instructional materials.

Comment. Two teachers commented that the proposed physics list of equipment and supplies was excessive.

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists. The items found on the physics list following the term "such as" are only suggestions.

Comment. Two university/college staff commented that descriptive titles to each content knowledge and skills statement for physics should be added. For example: KS 4 - Laws of Motion; KS 5 - Forces in the Physical World; KS 6 - Conservation of Energy and Momentum; KS 7 - Characteristics of Waves; KS 8 - Atomic Structure.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in structure.

Comment. Two teachers commented about the high level of mathematics in the proposed physics TEKS.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and were based on reasonable levels of algebraic understanding.

Comment. One teacher expressed opposition to the proposed physics course being suitable for students in Grades 9-12. The teacher stated that algebra should be a prerequisite for physics.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and were based on reasonable levels of algebraic understanding. The general requirements for the physics course include Algebra I as a suggested prerequisite or co-requisite. Comment: Sixteen administrators and two university/college staff commented that the introduction to the proposed physics TEKS should include additional topics, electricity and magnetism, which are covered in the student expectations.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need additional language in the introduction.

Comment. Fourteen administrators and two university/college staff commented that the introduction to the proposed physics TEKS should be replaced with a common statement found in biology, chemistry, and physics.

Response. The SBOE disagreed and determined that the revised introduction is appropriate for the physics TEKS.

Comment. Fifteen administrators and two university/college staff commented that a statement on scientific processes should be

replaced and recommended text relating to descriptive, comparative, and experimental investigations.

Response. The SBOE disagreed and determined that the revised introduction is appropriate for the physics TEKS.

Comment. One teacher commented that rolls of white craft paper should be deleted from the proposed physics equipment list.

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists.

Comment. Fifteen administrators and two university/college staff commented that the equipment list in the proposed physics TEKS should be streamlined and recommended a list with a number of items removed.

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists.

Comment. One teacher expressed opposition to the proposed physics equipment list. The teacher suggested the use of the term "or equivalent" instead of "such as" in the physics list.

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists. The items found on the physics list following the term "such as" are only suggestions.

Comment. One teacher commented that ticker timers and cathode ray tubes with horseshoe magnets should be deleted from the proposed physics equipment list.

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "use a wide variety of additional course apparatus, equipment, techniques, materials, and procedures as appropriate."

Response. The SBOE disagreed and determined that the revised TEKS included reasonable equipment and supply lists.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "generate and interpret graphs and charts describing different types of motion, including the use of real-time technology such as motion detectors, sensors, or photogates."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate and did not need the additional term "sensors" on the physics equipment list.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "analyze and describe accelerated motion in two dimensions, including projectile and circular examples."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and required an acceptable level of calculations in physics.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "analyze and describe the effect of forces on objects, including the law of inertia, the relationship between force and acceleration, and the nature of force pairs between objects."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and required an acceptable level of calculations in physics.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "demonstrate an understanding of the work-energy theorem in various situations."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and required an acceptable level of calculations in physics.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "understand and calculate mechanical energy, power, impulse, and momentum of a physical system."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and required an acceptable level of calculations in physics.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be revised to read, "describe and predict image formation as a consequence of reflection."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and rigor.

Comment. Fifteen administrators and two university/college staff commented that a student expectation in the proposed physics TEKS should be added to read, "describe and predict the effects of different media on refraction, including critical angles."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need an additional student expectation to describe refraction.

Comment. One teacher commented that a student expectation in the proposed physics TEKS that addresses mass-energy equivalence should be deleted because it is not appropriate for high school students.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate, reasonable, and attainable by the general student.

Comment. One teacher commented that the student expectation in physics that addresses applications of atomic and nuclear phenomena should be deleted because it is not appropriate for high school students.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor.

Comment. One teacher commented that digital cameras should be deleted from the physics equipment list. The teacher also suggested adding superconducting quantum interference devices to the equipment list.

Response. The SBOE disagreed and determined that additional physics equipment did not need to be added. Digital cameras are not included on the physics equipment list.

Comment. Two university/college staff commented that a student expectation in physics should be revised to read, "give examples of applications of atomic and nuclear phenomena such as radiation therapy, diagnostic imaging, and nuclear power and examples of applications of quantum phenomena such as digital cameras and plasma screens."

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in rigor and did not need an additional example.

Comment. Sixteen administrators commented that the Introduction to the proposed biology, chemistry, and physics TEKS should be replaced and recommended text relating to scientific inquiry and scientific, descriptive, and comparative investigations.

Response. The SBOE disagreed and determined that the revised TEKS were appropriate in clarity and did not need a more extensive explanation of scientific inquiry in the introduction.

SUBCHAPTER A. ELEMENTARY

19 TAC §§112.1, 112.10 - 112.16

The amendment and new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§112.11. Science, Kindergarten, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time.

(4) In Kindergarten, students observe and describe the natural world using their five senses. Students do science as inquiry in order to develop and enrich their abilities to understand scientific concepts and processes. Students develop vocabulary through their experiences investigating properties of common objects, earth materials, and organisms.

(A) A central theme throughout the study of scientific investigation and reasoning; matter and energy; force, motion, and energy; Earth and space; and organisms and environment is active engagement in asking questions, communicating ideas, and exploring with scientific tools. Scientific investigation and reasoning involves practicing safe procedures, asking questions about the natural world, and seeking answers to those questions through simple observations and descriptive investigations.

(B) Matter is described in terms of its physical properties, including relative size and mass, shape, color, and texture. The importance of light, heat, and sound energy is identified as it relates

to the students' everyday life. The location and motion of objects are explored.

(C) Weather is recorded and discussed on a daily basis so students may begin to recognize patterns in the weather. Other patterns are observed in the appearance of objects in the sky.

(D) In life science, students recognize the interdependence of organisms in the natural world. They understand that all organisms have basic needs that can be satisfied through interactions with living and nonliving things. Students will investigate the life cycle of plants and identify likenesses between parents and offspring.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures and uses environmentally appropriate and responsible practices. The student is expected to:

(A) identify and demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including wearing safety goggles, washing hands, and using materials appropriately;

(B) discuss the importance of safe practices to keep self and others safe and healthy; and

(C) demonstrate how to use, conserve, and dispose of natural resources and materials such as conserving water and reusing or recycling paper, plastic, and metal.

(2) Scientific investigation and reasoning. The student develops abilities to ask questions and seek answers in classroom and outdoor investigations. The student is expected to:

(A) ask questions about organisms, objects, and events observed in the natural world;

(B) plan and conduct simple descriptive investigations such as ways objects move;

(C) collect data and make observations using simple equipment such as hand lenses, primary balances, and non-standard measurement tools;

(D) record and organize data and observations using pictures, numbers, and words; and

(E) communicate observations with others about simple descriptive investigations.

(3) Scientific investigation and reasoning. The student knows that information and critical thinking are used in scientific problem solving. The student is expected to:

(A) identify and explain a problem such as the impact of littering on the playground and propose a solution in his/her own words;

(B) make predictions based on observable patterns in nature such as the shapes of leaves; and

(C) explore that scientists investigate different things in the natural world and use tools to help in their investigations.

(4) Scientific investigation and reasoning. The student uses age-appropriate tools and models to investigate the natural world. The student is expected to:

(A) collect information using tools, including computers, hand lenses, primary balances, cups, bowls, magnets, collecting nets, and notebooks; timing devices, including clocks and timers; non-standard measuring items such as paper clips and clothespins; weather

instruments such as demonstration thermometers and wind socks; and materials to support observations of habitats of organisms such as terrariums and aquariums; and

(B) use senses as a tool of observation to identify properties and patterns of organisms, objects, and events in the environment.

(5) Matter and energy. The student knows that objects have properties and patterns. The student is expected to:

(A) observe and record properties of objects, including relative size and mass, such as bigger or smaller and heavier or lighter, shape, color, and texture; and

(B) observe, record, and discuss how materials can be changed by heating or cooling.

(6) Force, motion, and energy. The student knows that energy, force, and motion are related and are a part of their everyday life. The student is expected to:

(A) use the five senses to explore different forms of energy such as light, heat, and sound;

(B) explore interactions between magnets and various materials;

(C) observe and describe the location of an object in relation to another such as above, below, behind, in front of, and beside; and

(D) observe and describe the ways that objects can move such as in a straight line, zigzag, up and down, back and forth, round and round, and fast and slow.

(7) Earth and space. The student knows that the natural world includes earth materials. The student is expected to:

(A) observe, describe, compare, and sort rocks by size, shape, color, and texture;

(B) observe and describe physical properties of natural sources of water, including color and clarity; and

(C) give examples of ways rocks, soil, and water are useful.

(8) Earth and space. The student knows that there are recognizable patterns in the natural world and among objects in the sky. The student is expected to:

(A) observe and describe weather changes from day to day and over seasons;

(B) identify events that have repeating patterns, including seasons of the year and day and night; and

(C) observe, describe, and illustrate objects in the sky such as the clouds, Moon, and stars, including the Sun.

(9) Organisms and environments. The student knows that plants and animals have basic needs and depend on the living and nonliving things around them for survival. The student is expected to:

(A) differentiate between living and nonliving things based upon whether they have basic needs and produce offspring; and

(B) examine evidence that living organisms have basic needs such as food, water, and shelter for animals and air, water, nutrients, sunlight, and space for plants.

(10) Organisms and environments. The student knows that organisms resemble their parents and have structures and processes that

help them survive within their environments. The student is expected to:

(A) sort plants and animals into groups based on physical characteristics such as color, size, body covering, or leaf shape;

(B) identify parts of plants such as roots, stem, and leaves and parts of animals such as head, eyes, and limbs;

(C) identify ways that young plants resemble the parent plant; and

(D) observe changes that are part of a simple life cycle of a plant: seed, seedling, plant, flower, and fruit.

§112.12. Science, Grade 1, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 80% of instructional time.

(4) In Grade 1, students observe and describe the natural world using their five senses. Students do science as inquiry in order to develop and enrich their abilities to understand the world around them in the context of scientific concepts and processes. Students develop vocabulary through their experiences investigating properties of common objects, earth materials, and organisms.

(A) A central theme in first grade science is active engagement in asking questions, communicating ideas, and exploring with scientific tools in order to explain scientific concepts and processes like scientific investigation and reasoning; matter and energy; force, motion, and energy; Earth and space; and organisms and environment. Scientific investigation and reasoning involves practicing safe procedures, asking questions about the natural world, and seeking answers to those questions through simple observations and descriptive investigations.

(B) Matter is described in terms of its physical properties, including relative size and mass, shape, color, and texture. The importance of light, heat, and sound energy is identified as it relates to the students' everyday life. The location and motion of objects are explored.

(C) Weather is recorded and discussed on a daily basis so students may begin to recognize patterns in the weather. In addition, patterns are observed in the appearance of objects in the sky.

(D) In life science, students recognize the interdependence of organisms in the natural world. They understand that all organisms have basic needs that can be satisfied through interactions with living and nonliving things. Students will investigate life cycles of animals and identify likenesses between parents and offspring.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures and uses environmentally appropriate and responsible practices. The student is expected to:

(A) recognize and demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including wearing safety goggles, washing hands, and using materials appropriately;

(B) recognize the importance of safe practices to keep self and others safe and healthy; and

(C) identify and learn how to use natural resources and materials, including conservation and reuse or recycling of paper, plastic, and metals.

(2) Scientific investigation and reasoning. The student develops abilities to ask questions and seek answers in classroom and outdoor investigations. The student is expected to:

(A) ask questions about organisms, objects, and events observed in the natural world;

(B) plan and conduct simple descriptive investigations such as ways objects move;

(C) collect data and make observations using simple equipment such as hand lenses, primary balances, and non-standard measurement tools;

(D) record and organize data using pictures, numbers, and words; and

(E) communicate observations and provide reasons for explanations using student-generated data from simple descriptive investigations.

(3) Scientific investigation and reasoning. The student knows that information and critical thinking are used in scientific problem solving. The student is expected to:

(A) identify and explain a problem such as finding a home for a classroom pet and propose a solution in his/her own words;

(B) make predictions based on observable patterns; and

(C) describe what scientists do.

(4) Scientific investigation and reasoning. The student uses age-appropriate tools and models to investigate the natural world. The student is expected to:

(A) collect, record, and compare information using tools, including computers, hand lenses, primary balances, cups, bowls, magnets, collecting nets, notebooks, and safety goggles; timing devices, including clocks and timers; non-standard measuring items such as paper clips and clothespins; weather instruments such as classroom demonstration thermometers and wind socks; and materials to support observations of habitats of organisms such as aquariums and terrariums; and

(B) measure and compare organisms and objects using non-standard units.

(5) Matter and energy. The student knows that objects have properties and patterns. The student is expected to:

(A) classify objects by observable properties of the materials from which they are made such as larger and smaller, heavier and lighter, shape, color, and texture; and

(B) predict and identify changes in materials caused by heating and cooling such as ice melting, water freezing, and water evaporating.

(6) Force, motion, and energy. The student knows that force, motion, and energy are related and are a part of everyday life. The student is expected to:

(A) identify and discuss how different forms of energy such as light, heat, and sound are important to everyday life;

(B) predict and describe how a magnet can be used to push or pull an object;

(C) describe the change in the location of an object such as closer to, nearer to, and farther from; and

(D) demonstrate and record the ways that objects can move such as in a straight line, zig zag, up and down, back and forth, round and round, and fast and slow.

(7) Earth and space. The student knows that the natural world includes rocks, soil, and water that can be observed in cycles, patterns, and systems. The student is expected to:

(A) observe, compare, describe, and sort components of soil by size, texture, and color;

(B) identify and describe a variety of natural sources of water, including streams, lakes, and oceans; and

(C) gather evidence of how rocks, soil, and water help to make useful products.

(8) Earth and space. The student knows that the natural world includes the air around us and objects in the sky. The student is expected to:

(A) record weather information, including relative temperature, such as hot or cold, clear or cloudy, calm or windy, and rainy or icy;

(B) observe and record changes in the appearance of objects in the sky such as clouds, the Moon, and stars, including the Sun;

(C) identify characteristics of the seasons of the year and day and night; and

(D) demonstrate that air is all around us and observe that wind is moving air.

(9) Organisms and environments. The student knows that the living environment is composed of relationships between organisms and the life cycles that occur. The student is expected to:

(A) sort and classify living and nonliving things based upon whether or not they have basic needs and produce offspring;

(B) analyze and record examples of interdependence found in various situations such as terrariums and aquariums or pet and caregiver; and

(C) gather evidence of interdependence among living organisms such as energy transfer through food chains and animals using plants for shelter.

(10) Organisms and environments. The student knows that organisms resemble their parents and have structures and processes that help them survive within their environments. The student is expected to:

(A) investigate how the external characteristics of an animal are related to where it lives, how it moves, and what it eats;

(B) identify and compare the parts of plants;

(C) compare ways that young animals resemble their parents; and

(D) observe and record life cycles of animals such as a chicken, frog, or fish.

§112.13. Science, Grade 2, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 60% of instructional time.

(4) In Grade 2, careful observation and investigation are used to learn about the natural world and reveal patterns, changes, and cycles. Students should understand that certain types of questions can be answered by using observation and investigations and that the information gathered in these may change as new observations are made. As students participate in investigation, they develop the skills necessary to do science as well as develop new science concepts.

(A) Within the physical environment, students expand their understanding of the properties of objects such as shape, mass, temperature, and flexibility then use those properties to compare, classify, and then combine the objects to do something that they could not do before. Students manipulate objects to demonstrate a change in motion and position.

(B) Within the natural environment, students will observe the properties of earth materials as well as predictable patterns that occur on Earth and in the sky. The students understand that those patterns are used to make choices in clothing, activities, and transportation.

(C) Within the living environment, students explore patterns, systems, and cycles by investigating characteristics of organisms, life cycles, and interactions among all the components within their habitat. Students examine how living organisms depend on each other and on their environment.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures. The student is expected to:

(A) identify and demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including wearing safety goggles, washing hands, and using materials appropriately;

(B) describe the importance of safe practices; and

(C) identify and demonstrate how to use, conserve, and dispose of natural resources and materials such as conserving water and reuse or recycling of paper, plastic, and metal.

(2) Scientific investigation and reasoning. The student develops abilities necessary to do scientific inquiry in classroom and outdoor investigations. The student is expected to:

(A) ask questions about organisms, objects, and events during observations and investigations;

(B) plan and conduct descriptive investigations such as how organisms grow;

(C) collect data from observations using simple equipment such as hand lenses, primary balances, thermometers, and non-standard measurement tools;

(D) record and organize data using pictures, numbers, and words;

(E) communicate observations and justify explanations using student-generated data from simple descriptive investigations; and

(F) compare results of investigations with what students and scientists know about the world.

(3) Scientific investigation and reasoning. The student knows that information and critical thinking, scientific problem solving, and the contributions of scientists are used in making decisions. The student is expected to:

(A) identify and explain a problem in his/her own words and propose a task and solution for the problem such as lack of water in a habitat;

(B) make predictions based on observable patterns; and

(C) identify what a scientist is and explore what different scientists do.

(4) Scientific investigation and reasoning. The student uses age-appropriate tools and models to investigate the natural world. The student is expected to:

(A) collect, record, and compare information using tools, including computers, hand lenses, rulers, primary balances, plastic beakers, magnets, collecting nets, notebooks, and safety goggles; timing devices, including clocks and stopwatches; weather instruments such as thermometers, wind vanes, and rain gauges; and materials to support observations of habitats of organisms such as terrariums and aquariums; and

(B) measure and compare organisms and objects using non-standard units that approximate metric units.

(5) Matter and energy. The student knows that matter has physical properties and those properties determine how it is described, classified, changed, and used. The student is expected to:

(A) classify matter by physical properties, including shape, relative mass, relative temperature, texture, flexibility, and whether material is a solid or liquid;

(B) compare changes in materials caused by heating and cooling;

(C) demonstrate that things can be done to materials to change their physical properties such as cutting, folding, sanding, and melting; and

(D) combine materials that when put together can do things that they cannot do by themselves such as building a tower or a bridge and justify the selection of those materials based on their physical properties.

(6) Force, motion, and energy. The student knows that forces cause change and energy exists in many forms. The student is expected to:

(A) investigate the effects on an object by increasing or decreasing amounts of light, heat, and sound energy such as how the color of an object appears different in dimmer light or how heat melts butter;

(B) observe and identify how magnets are used in everyday life;

(C) trace the changes in the position of an object over time such as a cup rolling on the floor and a car rolling down a ramp; and

(D) compare patterns of movement of objects such as sliding, rolling, and spinning.

(7) Earth and space. The student knows that the natural world includes earth materials. The student is expected to:

(A) observe and describe rocks by size, texture, and color;

(B) identify and compare the properties of natural sources of freshwater and saltwater; and

(C) distinguish between natural and manmade resources.

(8) Earth and space. The student knows that there are recognizable patterns in the natural world and among objects in the sky. The student is expected to:

(A) measure, record, and graph weather information, including temperature, wind conditions, precipitation, and cloud coverage, in order to identify patterns in the data;

(B) identify the importance of weather and seasonal information to make choices in clothing, activities, and transportation;

(C) explore the processes in the water cycle, including evaporation, condensation, and precipitation, as connected to weather conditions; and

(D) observe, describe, and record patterns of objects in the sky, including the appearance of the Moon.

(9) Organisms and environments. The student knows that living organisms have basic needs that must be met for them to survive within their environment. The student is expected to:

(A) identify the basic needs of plants and animals;

(B) identify factors in the environment, including temperature and precipitation, that affect growth and behavior such as migration, hibernation, and dormancy of living things; and

(C) compare and give examples of the ways living organisms depend on each other and on their environments such as food chains within a garden, park, beach, lake, and wooded area.

(10) Organisms and environments. The student knows that organisms resemble their parents and have structures and processes that help them survive within their environments. The student is expected to:

(A) observe, record, and compare how the physical characteristics and behaviors of animals help them meet their basic needs such as fins help fish move and balance in the water;

(B) observe, record, and compare how the physical characteristics of plants help them meet their basic needs such as stems carry water throughout the plant; and

(C) investigate and record some of the unique stages that insects undergo during their life cycle.

§112.14. Science, Grade 3, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific methods, analyzing information, making informed decisions, and using tools to collect and record information while addressing the content and vocabulary in physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 60% of instructional time.

(4) In Grade 3, students learn that the study of science uses appropriate tools and safe practices in planning and implementing investigations, asking and answering questions, collecting data by observing and measuring, and by using models to support scientific inquiry about the natural world.

(A) Students recognize that patterns, relationships, and cycles exist in matter. Students will investigate the physical properties of matter and will learn that changes occur. They explore mixtures and investigate light, sound, and heat/thermal energy in everyday life. Students manipulate objects by pushing and pulling to demonstrate changes in motion and position.

(B) Students investigate how the surface of Earth changes and provides resources that humans use. As students explore objects in the sky, they describe how relationships affect patterns and cycles on Earth. Students will construct models to demonstrate Sun, Earth, and Moon system relationships and will describe the Sun's role in the water cycle.

(C) Students explore patterns, systems, and cycles within environments by investigating characteristics of organisms, life cycles, and interactions among all components of the natural environment. Students examine how the environment plays a key role in survival. Students know that when changes in the environment occur organisms may thrive, become ill, or perish.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following school and home safety procedures and environmentally appropriate practices. The student is expected to:

(A) demonstrate safe practices as described in the Texas Safety Standards during classroom and outdoor investigations, including observing a schoolyard habitat; and

(B) make informed choices in the use and conservation of natural resources by recycling or reusing materials such as paper, aluminum cans, and plastics.

(2) Scientific investigation and reasoning. The student uses scientific inquiry methods during laboratory and outdoor investigations. The student is expected to:

(A) plan and implement descriptive investigations, including asking and answering questions, making inferences, and selecting and using equipment or technology needed, to solve a specific problem in the natural world;

(B) collect data by observing and measuring using the metric system and recognize differences between observed and measured data;

(C) construct maps, graphic organizers, simple tables, charts, and bar graphs using tools and current technology to organize, examine, and evaluate measured data;

(D) analyze and interpret patterns in data to construct reasonable explanations based on evidence from investigations;

(E) demonstrate that repeated investigations may increase the reliability of results; and

(F) communicate valid conclusions supported by data in writing, by drawing pictures, and through verbal discussion.

(3) Scientific investigation and reasoning. The student knows that information, critical thinking, scientific problem solving, and the contributions of scientists are used in making decisions. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) draw inferences and evaluate accuracy of product claims found in advertisements and labels such as for toys and food;

(C) represent the natural world using models such as volcanoes or Sun, Earth, and Moon system and identify their limitations, including size, properties, and materials; and

(D) connect grade-level appropriate science concepts with the history of science, science careers, and contributions of scientists.

(4) Scientific investigation and reasoning. The student knows how to use a variety of tools and methods to conduct science inquiry. The student is expected to:

(A) collect, record, and analyze information using tools, including microscopes, cameras, computers, hand lenses, metric rulers, Celsius thermometers, wind vanes, rain gauges, pan balances, graduated cylinders, beakers, spring scales, hot plates, meter sticks, compasses, magnets, collecting nets, notebooks, sound recorders, and Sun, Earth, and Moon system models; timing devices, including clocks and stopwatches; and materials to support observation of habitats of organisms such as terrariums and aquariums; and

(B) use safety equipment as appropriate, including safety goggles and gloves.

(5) Matter and energy. The student knows that matter has measurable physical properties and those properties determine how matter is classified, changed, and used. The student is expected to:

(A) measure, test, and record physical properties of matter, including temperature, mass, magnetism, and the ability to sink or float;

(B) describe and classify samples of matter as solids, liquids, and gases and demonstrate that solids have a definite shape and that liquids and gases take the shape of their container;

(C) predict, observe, and record changes in the state of matter caused by heating or cooling; and

(D) explore and recognize that a mixture is created when two materials are combined such as gravel and sand and metal and plastic paper clips.

(6) Force, motion, and energy. The student knows that forces cause change and that energy exists in many forms. The student is expected to:

(A) explore different forms of energy, including mechanical, light, sound, and heat/thermal in everyday life;

(B) demonstrate and observe how position and motion can be changed by pushing and pulling objects to show work being done such as swings, balls, pulleys, and wagons; and

(C) observe forces such as magnetism and gravity acting on objects.

(7) Earth and space. The student knows that Earth consists of natural resources and its surface is constantly changing. The student is expected to:

(A) explore and record how soils are formed by weathering of rock and the decomposition of plant and animal remains;

(B) investigate rapid changes in Earth's surface such as volcanic eruptions, earthquakes, and landslides;

(C) identify and compare different landforms, including mountains, hills, valleys, and plains; and

(D) explore the characteristics of natural resources that make them useful in products and materials such as clothing and furniture and how resources may be conserved.

(8) Earth and space. The student knows there are recognizable patterns in the natural world and among objects in the sky. The student is expected to:

(A) observe, measure, record, and compare day-to-day weather changes in different locations at the same time that include air temperature, wind direction, and precipitation;

(B) describe and illustrate the Sun as a star composed of gases that provides light and heat energy for the water cycle;

(C) construct models that demonstrate the relationship of the Sun, Earth, and Moon, including orbits and positions; and

(D) identify the planets in Earth's solar system and their position in relation to the Sun.

(9) Organisms and environments. The student knows that organisms have characteristics that help them survive and can describe patterns, cycles, systems, and relationships within the environments. The student is expected to:

(A) observe and describe the physical characteristics of environments and how they support populations and communities within an ecosystem;

(B) identify and describe the flow of energy in a food chain and predict how changes in a food chain affect the ecosystem such as removal of frogs from a pond or bees from a field; and

(C) describe environmental changes such as floods and droughts where some organisms thrive and others perish or move to new locations.

(10) Organisms and environments. The student knows that organisms undergo similar life processes and have structures that help them survive within their environments. The student is expected to:

(A) explore how structures and functions of plants and animals allow them to survive in a particular environment;

(B) explore that some characteristics of organisms are inherited such as the number of limbs on an animal or flower color and recognize that some behaviors are learned in response to living in a certain environment such as animals using tools to get food; and

(C) investigate and compare how animals and plants undergo a series of orderly changes in their diverse life cycles such as tomato plants, frogs, and lady bugs.

§112.15. Science, Grade 4, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 50% of instructional time.

(4) In Grade 4, investigations are used to learn about the natural world. Students should understand that certain types of questions can be answered by investigations and that methods, models, and conclusions built from these investigations change as new observations are made. Models of objects and events are tools for understanding the natural world and can show how systems work. They have limitations and based on new discoveries are constantly being modified to more closely reflect the natural world.

(A) Within the natural environment, students know that earth materials have properties that are constantly changing due to Earth's forces. The students learn that the natural world consists of resources, including renewable and nonrenewable, and their responsibility to conserve our natural resources for future generations. They will also explore Sun, Earth, and Moon relationships. The students will recognize that our major source of energy is the Sun.

(B) Within the living environment, students know and understand that living organisms within an ecosystem interact with one another and with their environment. The students will recognize that plants and animals have basic needs, and they are met through a flow of energy known as food webs. Students will explore how all living organisms go through a life cycle and that adaptations enable organisms to survive in their ecosystem.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations, following home and

school safety procedures and environmentally appropriate and ethical practices. The student is expected to:

(A) demonstrate safe practices and the use of safety equipment as described in the Texas Safety Standards during classroom and outdoor investigations; and

(B) make informed choices in the use and conservation of natural resources and reusing and recycling of materials such as paper, aluminum, glass, cans, and plastic.

(2) Scientific investigation and reasoning. The student uses scientific inquiry methods during laboratory and outdoor investigations. The student is expected to:

(A) plan and implement descriptive investigations, including asking well-defined questions, making inferences, and selecting and using appropriate equipment or technology to answer his/her questions;

(B) collect and record data by observing and measuring, using the metric system, and using descriptive words and numerals such as labeled drawings, writing, and concept maps;

(C) construct simple tables, charts, bar graphs, and maps using tools and current technology to organize, examine, and evaluate data;

(D) analyze data and interpret patterns to construct reasonable explanations from data that can be observed and measured;

(E) perform repeated investigations to increase the reliability of results; and

(F) communicate valid, oral, and written results supported by data.

(3) Scientific investigation and reasoning. The student uses critical thinking and scientific problem solving to make informed decisions. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) draw inferences and evaluate accuracy of services and product claims found in advertisements and labels such as for toys, food, and sunscreen;

(C) represent the natural world using models such as rivers, stream tables, or fossils and identify their limitations, including accuracy and size; and

(D) connect grade-level appropriate science concepts with the history of science, science careers, and contributions of scientists.

(4) Scientific investigation and reasoning. The student knows how to use a variety of tools, materials, equipment, and models to conduct science inquiry. The student is expected to:

(A) collect, record, and analyze information using tools, including calculators, microscopes, cameras, computers, hand lenses, metric rulers, Celsius thermometers, mirrors, spring scales, pan balances, triple beam balances, graduated cylinders, beakers, hot plates, meter sticks, compasses, magnets, collecting nets, and notebooks; timing devices, including clocks and stopwatches; and materials to support observation of habitats of organisms such as terrariums and aquariums; and

(B) use safety equipment as appropriate, including safety goggles and gloves.

(5) Matter and energy. The student knows that matter has measurable physical properties and those properties determine how matter is classified, changed, and used. The student is expected to:

(A) measure, compare, and contrast physical properties of matter, including size, mass, volume, states (solid, liquid, gas), temperature, magnetism, and the ability to sink or float;

(B) predict the changes caused by heating and cooling such as ice becoming liquid water and condensation forming on the outside of a glass of ice water; and

(C) compare and contrast a variety of mixtures and solutions such as rocks in sand, sand in water, or sugar in water.

(6) Force, motion, and energy. The student knows that energy exists in many forms and can be observed in cycles, patterns, and systems. The student is expected to:

(A) differentiate among forms of energy, including mechanical, sound, electrical, light, and heat/thermal;

(B) differentiate between conductors and insulators;

(C) demonstrate that electricity travels in a closed path, creating an electrical circuit, and explore an electromagnetic field; and

(D) design an experiment to test the effect of force on an object such as a push or a pull, gravity, friction, or magnetism.

(7) Earth and space. The students know that Earth consists of useful resources and its surface is constantly changing. The student is expected to:

(A) examine properties of soils, including color and texture, capacity to retain water, and ability to support the growth of plants;

(B) observe and identify slow changes to Earth's surface caused by weathering, erosion, and deposition from water, wind, and ice; and

(C) identify and classify Earth's renewable resources, including air, plants, water, and animals; and nonrenewable resources, including coal, oil, and natural gas; and the importance of conservation.

(8) Earth and space. The student knows that there are recognizable patterns in the natural world and among the Sun, Earth, and Moon system. The student is expected to:

(A) measure and record changes in weather and make predictions using weather maps, weather symbols, and a map key;

(B) describe and illustrate the continuous movement of water above and on the surface of Earth through the water cycle and explain the role of the Sun as a major source of energy in this process; and

(C) collect and analyze data to identify sequences and predict patterns of change in shadows, tides, seasons, and the observable appearance of the Moon over time.

(9) Organisms and environments. The student knows and understands that living organisms within an ecosystem interact with one another and with their environment. The student is expected to:

(A) investigate that most producers need sunlight, water, and carbon dioxide to make their own food, while consumers are dependent on other organisms for food; and

(B) describe the flow of energy through food webs, beginning with the Sun, and predict how changes in the ecosystem affect the food web such as a fire in a forest.

(10) Organisms and environments. The student knows that organisms undergo similar life processes and have structures that help them survive within their environment. The student is expected to:

(A) explore how adaptations enable organisms to survive in their environment such as comparing birds' beaks and leaves on plants;

(B) demonstrate that some likenesses between parents and offspring are inherited, passed from generation to generation such as eye color in humans or shapes of leaves in plants. Other likenesses are learned such as table manners or reading a book and seals balancing balls on their noses; and

(C) explore, illustrate, and compare life cycles in living organisms such as butterflies, beetles, radishes, or lima beans.

§112.16. Science, Grade 5, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process."

(2) Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include patterns, cycles, systems, models, and change and constancy.

(3) The study of elementary science includes planning and safely implementing classroom and outdoor investigations using scientific processes, including inquiry methods, analyzing information, making informed decisions, and using tools to collect and record information, while addressing the major concepts and vocabulary, in the context of physical, earth, and life sciences. Districts are encouraged to facilitate classroom and outdoor investigations for at least 50% of instructional time.

(4) In Grade 5, investigations are used to learn about the natural world. Students should understand that certain types of questions can be answered by investigations and that methods, models, and conclusions built from these investigations change as new observations are made. Models of objects and events are tools for understanding the natural world and can show how systems work. They have limitations and based on new discoveries are constantly being modified to more closely reflect the natural world.

(A) Within the physical environment, students learn about the physical properties of matter, including magnetism, physical states of matter, relative density, solubility in water, and the ability to conduct or insulate electrical and heat energy. Students explore the uses of light, thermal, electrical, and sound energies.

(B) Within the natural environment, students learn how changes occur on Earth's surface and that predictable patterns occur in the sky. Students learn that the natural world consists of resources, including nonrenewable, renewable, and alternative energy sources.

(C) Within the living environment, students learn that structure and function of organisms can improve the survival of members of a species. Students learn to differentiate between inherited traits and learned behaviors. Students learn that life cycles occur in animals and plants and that the carbon dioxide-oxygen cycle occurs naturally to support the living environment.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student conducts classroom and outdoor investigations following home and school safety procedures and environmentally appropriate and ethical practices. The student is expected to:

(A) demonstrate safe practices and the use of safety equipment as described in the Texas Safety Standards during classroom and outdoor investigations; and

(B) make informed choices in the conservation, disposal, and recycling of materials.

(2) Scientific investigation and reasoning. The student uses scientific methods during laboratory and outdoor investigations. The student is expected to:

(A) describe, plan, and implement simple experimental investigations testing one variable;

(B) ask well-defined questions, formulate testable hypotheses, and select and use appropriate equipment and technology;

(C) collect information by detailed observations and accurate measuring;

(D) analyze and interpret information to construct reasonable explanations from direct (observable) and indirect (inferred) evidence;

(E) demonstrate that repeated investigations may increase the reliability of results;

(F) communicate valid conclusions in both written and verbal forms; and

(G) construct appropriate simple graphs, tables, maps, and charts using technology, including computers, to organize, examine, and evaluate information.

(3) Scientific investigation and reasoning. The student uses critical thinking and scientific problem solving to make informed decisions. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) evaluate the accuracy of the information related to promotional materials for products and services such as nutritional labels;

(C) draw or develop a model that represents how something works or looks that cannot be seen such as how a soda dispensing machine works; and

(D) connect grade-level appropriate science concepts with the history of science, science careers, and contributions of scientists.

(4) Scientific investigation and reasoning. The student knows how to use a variety of tools and methods to conduct science inquiry. The student is expected to:

(A) collect, record, and analyze information using tools, including calculators, microscopes, cameras, computers, hand lenses, metric rulers, Celsius thermometers, prisms, mirrors, pan balances, triple beam balances, spring scales, graduated cylinders, beakers, hot plates, meter sticks, magnets, collecting nets, and notebooks; timing devices, including clocks and stopwatches; and materials to support observations of habitats or organisms such as terrariums and aquariums; and

(B) use safety equipment, including safety goggles and gloves.

(5) Matter and energy. The student knows that matter has measurable physical properties and those properties determine how matter is classified, changed, and used. The student is expected to:

(A) classify matter based on physical properties, including mass, magnetism, physical state (solid, liquid, and gas), relative density (sinking and floating), solubility in water, and the ability to conduct or insulate thermal energy or electric energy;

(B) identify the boiling and freezing/melting points of water on the Celsius scale;

(C) demonstrate that some mixtures maintain physical properties of their ingredients such as iron filings and sand; and

(D) identify changes that can occur in the physical properties of the ingredients of solutions such as dissolving salt in water or adding lemon juice to water.

(6) Force, motion, and energy. The student knows that energy occurs in many forms and can be observed in cycles, patterns, and systems. The student is expected to:

(A) explore the uses of energy, including mechanical, light, thermal, electrical, and sound energy;

(B) demonstrate that the flow of electricity in circuits requires a complete path through which an electric current can pass and can produce light, heat, and sound;

(C) demonstrate that light travels in a straight line until it strikes an object or travels through one medium to another and demonstrate that light can be reflected such as the use of mirrors or other shiny surfaces and refracted such as the appearance of an object when observed through water; and

(D) design an experiment that tests the effect of force on an object.

(7) Earth and space. The student knows Earth's surface is constantly changing and consists of useful resources. The student is expected to:

(A) explore the processes that led to the formation of sedimentary rocks and fossil fuels;

(B) recognize how landforms such as deltas, canyons, and sand dunes are the result of changes to Earth's surface by wind, water, and ice;

(C) identify alternative energy resources such as wind, solar, hydroelectric, geothermal, and biofuels; and

(D) identify fossils as evidence of past living organisms and the nature of the environments at the time using models.

(8) Earth and space. The student knows that there are recognizable patterns in the natural world and among the Sun, Earth, and Moon system. The student is expected to:

(A) differentiate between weather and climate;

(B) explain how the Sun and the ocean interact in the water cycle;

(C) demonstrate that Earth rotates on its axis once approximately every 24 hours causing the day/night cycle and the apparent movement of the Sun across the sky; and

(D) identify and compare the physical characteristics of the Sun, Earth, and Moon.

(9) Organisms and environments. The student knows that there are relationships, systems, and cycles within environments. The student is expected to:

(A) observe the way organisms live and survive in their ecosystem by interacting with the living and non-living elements;

(B) describe how the flow of energy derived from the Sun, used by producers to create their own food, is transferred through a food chain and food web to consumers and decomposers;

(C) predict the effects of changes in ecosystems caused by living organisms, including humans, such as the overpopulation of grazers or the building of highways; and

(D) identify the significance of the carbon dioxide-oxygen cycle to the survival of plants and animals.

(10) Organisms and environments. The student knows that organisms undergo similar life processes and have structures that help them survive within their environments. The student is expected to:

(A) compare the structures and functions of different species that help them live and survive such as hooves on prairie animals or webbed feet in aquatic animals;

(B) differentiate between inherited traits of plants and animals such as spines on a cactus or shape of a beak and learned behaviors such as an animal learning tricks or a child riding a bicycle; and

(C) describe the differences between complete and incomplete metamorphosis of insects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§112.17 - 112.21

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c).

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.008.

§112.18. *Science, Grade 6, Beginning with School Year 2010-2011.*

(a) Introduction.

(1) Science, as defined by the National Academy of Science, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(2) Scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions become theories. Scientific theories are based on natural and physical phenomena and are capable of being tested by multiple, independent researchers. Students should know that scientific theories, unlike hypotheses, are well-established and highly reliable, but they may still be subject to change as new information and technologies are developed. Students should be able to distinguish between scientific decision-making methods and ethical/social decisions that involve the application of scientific information.

(3) Grade 6 science is interdisciplinary in nature; however, much of the content focus is on physical science. National standards in science are organized as multi-grade blocks such as Grades 5-8 rather than individual grade levels. In order to follow the grade level format used in Texas, the various national standards are found among Grades 6, 7, and 8. Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include change and constancy, patterns, cycles, systems, models, and scale.

(4) The strands for Grade 6 include:

(A) Scientific investigations and reasoning.

(i) To develop a rich knowledge of science and the natural world, students must become familiar with different modes of scientific inquiry, rules of evidence, ways of formulating questions, ways of proposing explanations, and the diverse ways scientists study the natural world and propose explanations based on evidence derived from their work.

(ii) Scientific investigations are conducted for different reasons. All investigations require a research question, careful observations, data gathering, and analysis of the data to identify the patterns that will explain the findings. Descriptive investigations are used to explore new phenomena such as conducting surveys of organisms or measuring the abiotic components in a given habitat. Descriptive statistics include frequency, range, mean, median, and mode. A hypothesis is not required in a descriptive investigation. On the other hand, when conditions can be controlled in order to focus on a single variable, experimental research design is used to determine causation. Students should experience both types of investigations and understand that different scientific research questions require different research designs.

(iii) Scientific investigations are used to learn about the natural world. Students should understand that certain types of questions can be answered by investigations, and the methods, models, and conclusions built from these investigations change as new observations are made. Models of objects and events are tools for understanding the natural world and can show how systems work. Models have limitations and based on new discoveries are constantly being modified to more closely reflect the natural world.

(B) Matter and energy.

(i) Matter can be classified as elements, compounds, or mixtures. Students have already had experience with mixtures in Grade 5, so Grade 6 will concentrate on developing an understanding of elements and compounds. It is important that students learn the differences between elements and compounds based on observations, description of physical properties, and chemical reactions. Elements are represented by chemical symbols, while compounds are represented by chemical formulas. Subsequent grades will learn about the differences at the molecular and atomic level.

(ii) Elements are classified as metals, nonmetals, and metalloids based on their physical properties. The elements are divided into three groups on the Periodic Table. Each different substance usually has a different density, so density can be used as an identifying property. Therefore, calculating density aids classification of substances.

(iii) Energy resources are available on a renewable, nonrenewable, or indefinite basis. Understanding the origins and uses of these resources enables informed decision making. Students should consider the ethical/social issues surrounding Earth's natural energy resources, while looking at the advantages and disadvantages of their long-term uses.

(C) Force, motion, and energy. Energy occurs in two types, potential and kinetic, and can take several forms. Thermal energy can be transferred by conduction, convection, or radiation. It can also be changed from one form to another. Students will investigate the relationship between force and motion using a variety of means, including calculations and measurements.

(D) Earth and space. The focus of this strand is on introducing Earth's processes. Students should develop an understanding of Earth as part of our solar system. The topics include organization of our solar system, the role of gravity, and space exploration.

(E) Organisms and environments. Students will gain an understanding of the broadest taxonomic classifications of organisms and how characteristics determine their classification. The other major topics developed in this strand include the interdependence between organisms and their environments and the levels of organization within an ecosystem.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student, for at least 40% of instructional time, conducts laboratory and field investigations following safety procedures and environmentally appropriate and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations as outlined in the Texas Safety Standards; and

(B) practice appropriate use and conservation of resources, including disposal, reuse, or recycling of materials.

(2) Scientific investigation and reasoning. The student uses scientific inquiry methods during laboratory and field investigations. The student is expected to:

(A) plan and implement comparative and descriptive investigations by making observations, asking well-defined questions, and using appropriate equipment and technology;

(B) design and implement experimental investigations by making observations, asking well-defined questions, formulating testable hypotheses, and using appropriate equipment and technology;

(C) collect and record data using the International System of Units (SI) and qualitative means such as labeled drawings, writing, and graphic organizers;

(D) construct tables and graphs, using repeated trials and means, to organize data and identify patterns; and

(E) analyze data to formulate reasonable explanations, communicate valid conclusions supported by the data, and predict trends.

(3) Scientific investigation and reasoning. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions and knows the contributions of relevant scientists. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) use models to represent aspects of the natural world such as a model of Earth's layers;

(C) identify advantages and limitations of models such as size, scale, properties, and materials; and

(D) relate the impact of research on scientific thought and society, including the history of science and contributions of scientists as related to the content.

(4) Scientific investigation and reasoning. The student knows how to use a variety of tools and safety equipment to conduct science inquiry. The student is expected to:

(A) use appropriate tools to collect, record, and analyze information, including journals/notebooks, beakers, Petri dishes, meter sticks, graduated cylinders, hot plates, test tubes, triple beam balances, microscopes, thermometers, calculators, computers, timing devices, and other equipment as needed to teach the curriculum; and

(B) use preventative safety equipment, including chemical splash goggles, aprons, and gloves, and be prepared to use emergency safety equipment, including an eye/face wash, a fire blanket, and a fire extinguisher.

(5) Matter and energy. The student knows the differences between elements and compounds. The student is expected to:

(A) know that an element is a pure substance represented by chemical symbols;

(B) recognize that a limited number of the many known elements comprise the largest portion of solid Earth, living matter, oceans, and the atmosphere;

(C) differentiate between elements and compounds on the most basic level; and

(D) identify the formation of a new substance by using the evidence of a possible chemical change such as production of a gas, change in temperature, production of a precipitate, or color change.

(6) Matter and energy. The student knows matter has physical properties that can be used for classification. The student is expected to:

(A) compare metals, nonmetals, and metalloids using physical properties such as luster, conductivity, or malleability;

(B) calculate density to identify an unknown substance; and

(C) test the physical properties of minerals, including hardness, color, luster, and streak.

(7) Matter and energy. The student knows that some of Earth's energy resources are available on a nearly perpetual basis, while others can be renewed over a relatively short period of time. Some energy resources, once depleted, are essentially nonrenewable. The student is expected to:

(A) research and debate the advantages and disadvantages of using coal, oil, natural gas, nuclear power, biomass, wind, hydropower, geothermal, and solar resources; and

(B) design a logical plan to manage energy resources in the home, school, or community.

(8) Force, motion, and energy. The student knows force and motion are related to potential and kinetic energy. The student is expected to:

(A) compare and contrast potential and kinetic energy;

(B) identify and describe the changes in position, direction, and speed of an object when acted upon by unbalanced forces;

(C) calculate average speed using distance and time measurements;

(D) measure and graph changes in motion; and

(E) investigate how inclined planes and pulleys can be used to change the amount of force to move an object.

(9) Force, motion, and energy. The student knows that the Law of Conservation of Energy states that energy can neither be created nor destroyed, it just changes form. The student is expected to:

(A) investigate methods of thermal energy transfer, including conduction, convection, and radiation;

(B) verify through investigations that thermal energy moves in a predictable pattern from warmer to cooler until all the substances attain the same temperature such as an ice cube melting; and

(C) demonstrate energy transformations such as energy in a flashlight battery changes from chemical energy to electrical energy to light energy.

(10) Earth and space. The student understands the structure of Earth, the rock cycle, and plate tectonics. The student is expected to:

(A) build a model to illustrate the structural layers of Earth, including the inner core, outer core, mantle, crust, asthenosphere, and lithosphere;

(B) classify rocks as metamorphic, igneous, or sedimentary by the processes of their formation;

(C) identify the major tectonic plates, including Eurasian, African, Indo-Australian, Pacific, North American, and South American; and

(D) describe how plate tectonics causes major geological events such as ocean basins, earthquakes, volcanic eruptions, and mountain building.

(11) Earth and space. The student understands the organization of our solar system and the relationships among the various bodies that comprise it. The student is expected to:

(A) describe the physical properties, locations, and movements of the Sun, planets, Galilean moons, meteors, asteroids, and comets;

(B) understand that gravity is the force that governs the motion of our solar system; and

(C) describe the history and future of space exploration, including the types of equipment and transportation needed for space travel.

(12) Organisms and environments. The student knows all organisms are classified into Domains and Kingdoms. Organisms within these taxonomic groups share similar characteristics which allow them to interact with the living and nonliving parts of their ecosystem. The student is expected to:

(A) understand that all organisms are composed of one or more cells;

(B) recognize that the presence of a nucleus determines whether a cell is prokaryotic or eukaryotic;

(C) recognize that the broadest taxonomic classification of living organisms is divided into currently recognized Domains;

(D) identify the basic characteristics of organisms, including prokaryotic or eukaryotic, unicellular or multicellular, autotrophic or heterotrophic, and mode of reproduction, that further classify them in the currently recognized Kingdoms;

(E) describe biotic and abiotic parts of an ecosystem in which organisms interact; and

(F) diagram the levels of organization within an ecosystem, including organism, population, community, and ecosystem.

§112.19. Science, Grade 7, Beginning with School Year 2010-2011.

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(2) Scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions become theories. Scientific theories are based on natural and physical phenomena and are capable of being tested by multiple, independent researchers. Students should know that scientific theories, unlike hypotheses, are well-established and highly reliable, but they may still be subject to change as new information and technologies are developed. Students should be able to distinguish between scientific decision-making methods and ethical/social decisions that involve the application of scientific information.

(3) Grade 7 science is interdisciplinary in nature; however, much of the content focus is on organisms and the environment. National standards in science are organized as a multi-grade blocks such as Grades 5-8 rather than individual grade levels. In order to follow the grade level format used in Texas, the various national standards are found among Grades 6, 7, and 8. Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include change and constancy, patterns, cycles, systems, models, and scale.

(4) The strands for Grade 7 include:

(A) Scientific investigation and reasoning.

(i) To develop a rich knowledge of science and the natural world, students must become familiar with different modes of

scientific inquiry, rules of evidence, ways of formulating questions, ways of proposing explanations, and the diverse ways scientists study the natural world and propose explanations based on evidence derived from their work.

(ii) Scientific investigations are conducted for different reasons. All investigations require a research question, careful observations, data gathering, and analysis of the data to identify the patterns that will explain the findings. Descriptive investigations are used to explore new phenomena such as conducting surveys of organisms or measuring the abiotic components in a given habitat. Descriptive statistics include frequency, range, mean, median, and mode. A hypothesis is not required in a descriptive investigation. On the other hand, when conditions can be controlled in order to focus on a single variable, experimental research design is used to determine causation. Students should experience both types of investigations and understand that different scientific research questions require different research designs.

(iii) Scientific investigations are used to learn about the natural world. Students should understand that certain types of questions can be answered by investigations, and the methods, models, and conclusions built from these investigations change as new observations are made. Models of objects and events are tools for understanding the natural world and can show how systems work. Models have limitations and based on new discoveries are constantly being modified to more closely reflect the natural world.

(B) Matter and energy. Matter and energy are conserved throughout living systems. Radiant energy from the Sun drives much of the flow of energy throughout living systems due to the process of photosynthesis in organisms described as producers. Most consumers then depend on producers to meet their energy needs. Decomposers play an important role in recycling matter. Organic compounds are composed of carbon and other elements that are recycled due to chemical changes that rearrange the elements for the particular needs of that living system. Large molecules such as carbohydrates are composed of chains of smaller units such as sugars, similar to a train being composed of multiple box cars. Subsequent grade levels will learn about the differences at the molecular and atomic level.

(C) Force, motion, and energy. Force, motion, and energy are observed in living systems and the environment in several ways. Interactions between muscular and skeletal systems allow the body to apply forces and transform energy both internally and externally. Force and motion can also describe the direction and growth of seedlings, turgor pressure, and geotropism. Catastrophic events of weather systems such as hurricanes, floods, and tornadoes can shape and restructure the environment through the force and motion evident in them. Weathering, erosion, and deposition occur in environments due to the forces of gravity, wind, ice, and water.

(D) Earth and space. Earth and space phenomena can be observed in a variety of settings. Both natural events and human activities can impact Earth systems. There are characteristics of Earth and relationships to objects in our solar system that allow life to exist.

(E) Organisms and environments.

(i) Students will understand the relationship between living organisms and their environment. Different environments support different living organisms that are adapted to that region of Earth. Organisms are living systems that maintain a steady state with that environment and whose balance may be disrupted by internal and external stimuli. External stimuli include human activity or the environment. Successful organisms can reestablish a balance through different processes such as a feedback mechanism. Ecological succession can be seen on a broad or small scale.

(ii) Students learn that all organisms obtain energy, get rid of wastes, grow, and reproduce. During both sexual and asexual reproduction, traits are passed onto the next generation. These traits are contained in genetic material that is found on genes within a chromosome from the parent. Changes in traits sometimes occur in a population over many generations. One of the ways a change can occur is through the process of natural selection. Students extend their understanding of structures in living systems from a previous focus on external structures to an understanding of internal structures and functions within living things.

(iii) All living organisms are made up of smaller units called cells. All cells use energy, get rid of wastes, and contain genetic material. Students will compare plant and animal cells and understand the internal structures within them that allow them to obtain energy, get rid of wastes, grow, and reproduce in different ways. Cells can organize into tissues, tissues into organs, and organs into organ systems. Students will learn the major functions of human body systems such as the ability of the integumentary system to protect against infection, injury, and ultraviolet (UV) radiation; regulate body temperature; and remove waste.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student, for at least 40% of the instructional time, conducts laboratory and field investigations following safety procedures and environmentally appropriate and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations as outlined in the Texas Safety Standards; and

(B) practice appropriate use and conservation of resources, including disposal, reuse, or recycling of materials.

(2) Scientific investigation and reasoning. The student uses scientific inquiry methods during laboratory and field investigations. The student is expected to:

(A) plan and implement comparative and descriptive investigations by making observations, asking well-defined questions, and using appropriate equipment and technology;

(B) design and implement experimental investigations by making observations, asking well-defined questions, formulating testable hypotheses, and using appropriate equipment and technology;

(C) collect and record data using the International System of Units (SI) and qualitative means such as labeled drawings, writing, and graphic organizers;

(D) construct tables and graphs, using repeated trials and means, to organize data and identify patterns; and

(E) analyze data to formulate reasonable explanations, communicate valid conclusions supported by the data, and predict trends.

(3) Scientific investigation and reasoning. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions and knows the contributions of relevant scientists. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) use models to represent aspects of the natural world such as human body systems and plant and animal cells;

(C) identify advantages and limitations of models such as size, scale, properties, and materials; and

(D) relate the impact of research on scientific thought and society, including the history of science and contributions of scientists as related to the content.

(4) Science investigation and reasoning. The student knows how to use a variety of tools and safety equipment to conduct science inquiry. The student is expected to:

(A) use appropriate tools to collect, record, and analyze information, including life science models, hand lens, stereoscopes, microscopes, beakers, Petri dishes, microscope slides, graduated cylinders, test tubes, meter sticks, metric rulers, metric tape measures, timing devices, hot plates, balances, thermometers, calculators, water test kits, computers, temperature and pH probes, collecting nets, insect traps, globes, digital cameras, journals/notebooks, and other equipment as needed to teach the curriculum; and

(B) use preventative safety equipment, including chemical splash goggles, aprons, and gloves, and be prepared to use emergency safety equipment, including an eye/face wash, a fire blanket, and a fire extinguisher.

(5) Matter and energy. The student knows that interactions occur between matter and energy. The student is expected to:

(A) recognize that radiant energy from the Sun is transformed into chemical energy through the process of photosynthesis;

(B) demonstrate and explain the cycling of matter within living systems such as in the decay of biomass in a compost bin; and

(C) diagram the flow of energy through living systems, including food chains, food webs, and energy pyramids.

(6) Matter and energy. The student knows that matter has physical and chemical properties and can undergo physical and chemical changes. The student is expected to:

(A) identify that organic compounds contain carbon and other elements such as hydrogen, oxygen, phosphorus, nitrogen, or sulfur;

(B) distinguish between physical and chemical changes in matter in the digestive system; and

(C) recognize how large molecules are broken down into smaller molecules such as carbohydrates can be broken down into sugars.

(7) Force, motion, and energy. The student knows that there is a relationship among force, motion, and energy. The student is expected to:

(A) contrast situations where work is done with different amounts of force to situations where no work is done such as moving a box with a ramp and without a ramp, or standing still;

(B) illustrate the transformation of energy within an organism such as the transfer from chemical energy to heat and thermal energy in digestion; and

(C) demonstrate and illustrate forces that affect motion in everyday life such as emergence of seedlings, turgor pressure, and geotropism.

(8) Earth and space. The student knows that natural events and human activity can impact Earth systems. The student is expected to:

(A) predict and describe how different types of catastrophic events impact ecosystems such as floods, hurricanes, or tornadoes;

(B) analyze the effects of weathering, erosion, and deposition on the environment in ecoregions of Texas; and

(C) model the effects of human activity on groundwater and surface water in a watershed.

(9) Earth and space. The student knows components of our solar system. The student is expected to:

(A) analyze the characteristics of objects in our solar system that allow life to exist such as the proximity of the Sun, presence of water, and composition of the atmosphere; and

(B) identify the accommodations, considering the characteristics of our solar system, that enabled manned space exploration.

(10) Organisms and environments. The student knows that there is a relationship between organisms and the environment. The student is expected to:

(A) observe and describe how different environments, including microhabitats in schoolyards and biomes, support different varieties of organisms;

(B) describe how biodiversity contributes to the sustainability of an ecosystem; and

(C) observe, record, and describe the role of ecological succession such as in a microhabitat of a garden with weeds.

(11) Organisms and environments. The student knows that populations and species demonstrate variation and inherit many of their unique traits through gradual processes over many generations. The student is expected to:

(A) examine organisms or their structures such as insects or leaves and use dichotomous keys for identification;

(B) explain variation within a population or species by comparing external features, behaviors, or physiology of organisms that enhance their survival such as migration, hibernation, or storage of food in a bulb; and

(C) identify some changes in genetic traits that have occurred over several generations through natural selection and selective breeding such as the Galapagos Medium Ground Finch (*Geospiza fortis*) or domestic animals.

(12) Organisms and environments. The student knows that living systems at all levels of organization demonstrate the complementary nature of structure and function. The student is expected to:

(A) investigate and explain how internal structures of organisms have adaptations that allow specific functions such as gills in fish, hollow bones in birds, or xylem in plants;

(B) identify the main functions of the systems of the human organism, including the circulatory, respiratory, skeletal, muscular, digestive, excretory, reproductive, integumentary, nervous, and endocrine systems;

(C) recognize levels of organization in plants and animals, including cells, tissues, organs, organ systems, and organisms;

(D) differentiate between structure and function in plant and animal cell organelles, including cell membrane, cell wall, nucleus, cytoplasm, mitochondrion, chloroplast, and vacuole;

(E) compare the functions of a cell to the functions of organisms such as waste removal; and

(F) recognize that according to cell theory all organisms are composed of cells and cells carry on similar functions such as extracting energy from food to sustain life.

(13) Organisms and environments. The student knows that a living organism must be able to maintain balance in stable internal conditions in response to external and internal stimuli. The student is expected to:

(A) investigate how organisms respond to external stimuli found in the environment such as phototropism and fight or flight; and

(B) describe and relate responses in organisms that may result from internal stimuli such as wilting in plants and fever or vomiting in animals that allow them to maintain balance.

(14) Organisms and environments. The student knows that reproduction is a characteristic of living organisms and that the instructions for traits are governed in the genetic material. The student is expected to:

(A) define heredity as the passage of genetic instructions from one generation to the next generation;

(B) compare the results of uniform or diverse offspring from sexual reproduction or asexual reproduction; and

(C) recognize that inherited traits of individuals are governed in the genetic material found in the genes within chromosomes in the nucleus.

§112.20. *Science, Grade 8, Beginning with School Year 2010-2011.*

(a) Introduction.

(1) Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(2) Scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions become theories. Scientific theories are based on natural and physical phenomena and are capable of being tested by multiple, independent researchers. Students should know that scientific theories, unlike hypotheses, are well-established and highly reliable, but they may still be subject to change as new information and technologies are developed. Students should be able to distinguish between scientific decision-making methods and ethical/social decisions that involve the application of scientific information.

(3) Grade 8 science is interdisciplinary in nature; however, much of the content focus is on earth and space science. National standards in science are organized as multi-grade blocks such as Grades 5-8 rather than individual grade levels. In order to follow the grade level format used in Texas, the various national standards are found among Grades 6, 7, and 8. Recurring themes are pervasive in sciences, mathematics, and technology. These ideas transcend disciplinary boundaries and include change and constancy, patterns, cycles, systems, models, and scale.

(4) The strands for Grade 8 include:

(A) Scientific investigation and reasoning.

(i) To develop a rich knowledge of science and the natural world, students must become familiar with different modes of scientific inquiry, rules of evidence, ways of formulating questions, ways of proposing explanations, and the diverse ways scientists study the natural world and propose explanations based on evidence derived from their work.

(ii) Scientific investigations are conducted for different reasons. All investigations require a research question, careful observations, data gathering, and analysis of the data to identify the patterns that will explain the findings. Descriptive investigations are used to explore new phenomena such as conducting surveys of organisms or measuring the abiotic components in a given habitat. Descriptive statistics include frequency, range, mean, median, and mode. A hypothesis is not required in a descriptive investigation. On the other hand, when conditions can be controlled in order to focus on a single variable, experimental research design is used to determine causation. Students should experience both types of investigations and understand that different scientific research questions require different research designs.

(iii) Scientific investigations are used to learn about the natural world. Students should understand that certain types of questions can be answered by investigations, and the methods, models, and conclusions built from these investigations change as new observations are made. Models of objects and events are tools for understanding the natural world and can show how systems work. Models have limitations and based on new discoveries are constantly being modified to more closely reflect the natural world.

(B) Matter and energy. Students recognize that matter is composed of atoms. Students examine information on the Periodic Table to recognize that elements are grouped into families. In addition, students understand the basic concept of conservation of mass. Lab activities will allow students to demonstrate evidence of chemical reactions. They will use chemical formulas and balanced equations to show chemical reactions and the formation of new substances.

(C) Force, motion, and energy. Students experiment with the relationship between forces and motion through the study of Newton's three laws. Students learn how these forces relate to geologic processes and astronomical phenomena. In addition, students recognize that these laws are evident in everyday objects and activities. Mathematics is used to calculate speed using distance and time measurements.

(D) Earth and space. Students identify the role of natural events in altering Earth systems. Cycles within Sun, Earth, and Moon systems are studied as students learn about seasons, tides, and lunar phases. Students learn that stars and galaxies are part of the universe and that distances in space are measured by using light waves. In addition, students use data to research scientific theories of the origin of the universe. Students will illustrate how Earth features change over time by plate tectonics. They will interpret land and erosional features on topographic maps. Students learn how interactions in solar, weather, and ocean systems create changes in weather patterns and climate.

(E) Organisms and environments. In studies of living systems, students explore the interdependence between these systems. Interactions between organisms in ecosystems, including producer/consumer, predator/prey, and parasite/host relationships, are investigated in aquatic and terrestrial systems. Students describe how biotic and abiotic factors affect the number of organisms and populations present in an ecosystem. In addition, students explore how organisms and their populations respond to short- and long-term environmental changes, including those caused by human activities.

(b) Knowledge and skills.

(1) Scientific investigation and reasoning. The student, for at least 40% of instructional time, conducts laboratory and field investigations following safety procedures and environmentally appropriate and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations as outlined in the Texas Safety Standards; and

(B) practice appropriate use and conservation of resources, including disposal, reuse, or recycling of materials.

(2) Scientific investigation and reasoning. The student uses scientific inquiry methods during laboratory and field investigations. The student is expected to:

(A) plan and implement comparative and descriptive investigations by making observations, asking well-defined questions, and using appropriate equipment and technology;

(B) design and implement comparative and experimental investigations by making observations, asking well-defined questions, formulating testable hypotheses, and using appropriate equipment and technology;

(C) collect and record data using the International System of Units (SI) and qualitative means such as labeled drawings, writing, and graphic organizers;

(D) construct tables and graphs, using repeated trials and means, to organize data and identify patterns; and

(E) analyze data to formulate reasonable explanations, communicate valid conclusions supported by the data, and predict trends.

(3) Scientific investigation and reasoning. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions and knows the contributions of relevant scientists. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) use models to represent aspects of the natural world such as an atom, a molecule, space, or a geologic feature;

(C) identify advantages and limitations of models such as size, scale, properties, and materials; and

(D) relate the impact of research on scientific thought and society, including the history of science and contributions of scientists as related to the content.

(4) Scientific investigation and reasoning. The student knows how to use a variety of tools and safety equipment to conduct science inquiry. The student is expected to:

(A) use appropriate tools to collect, record, and analyze information, including lab journals/notebooks, beakers, meter sticks, graduated cylinders, anemometers, psychrometers, hot plates, test tubes, spring scales, balances, microscopes, thermometers, calculators, computers, spectrosopes, timing devices, and other equipment as needed to teach the curriculum; and

(B) use preventative safety equipment, including chemical splash goggles, aprons, and gloves, and be prepared to use emergency safety equipment, including an eye/face wash, a fire blanket, and a fire extinguisher.

(5) Matter and energy. The student knows that matter is composed of atoms and has chemical and physical properties. The student is expected to:

(A) describe the structure of atoms, including the masses, electrical charges, and locations, of protons and neutrons in the nucleus and electrons in the electron cloud;

(B) identify that protons determine an element's identity and valence electrons determine its chemical properties, including reactivity;

(C) interpret the arrangement of the Periodic Table, including groups and periods, to explain how properties are used to classify elements;

(D) recognize that chemical formulas are used to identify substances and determine the number of atoms of each element in chemical formulas containing subscripts;

(E) investigate how evidence of chemical reactions indicate that new substances with different properties are formed; and

(F) recognize whether a chemical equation containing coefficients is balanced or not and how that relates to the law of conservation of mass.

(6) Force, motion, and energy. The student knows that there is a relationship between force, motion, and energy. The student is expected to:

(A) demonstrate and calculate how unbalanced forces change the speed or direction of an object's motion;

(B) differentiate between speed, velocity, and acceleration; and

(C) investigate and describe applications of Newton's law of inertia, law of force and acceleration, and law of action-reaction such as in vehicle restraints, sports activities, amusement park rides, Earth's tectonic activities, and rocket launches.

(7) Earth and space. The student knows the effects resulting from cyclical movements of the Sun, Earth, and Moon. The student is expected to:

(A) model and illustrate how the tilted Earth rotates on its axis, causing day and night, and revolves around the Sun causing changes in seasons;

(B) demonstrate and predict the sequence of events in the lunar cycle; and

(C) relate the position of the Moon and Sun to their effect on ocean tides.

(8) Earth and space. The student knows characteristics of the universe. The student is expected to:

(A) describe components of the universe, including stars, nebulae, and galaxies, and use models such as the Hertzsprung-Russell diagram for classification;

(B) recognize that the Sun is a medium-sized star near the edge of a disc-shaped galaxy of stars and that the Sun is many thousands of times closer to Earth than any other star;

(C) explore how different wavelengths of the electromagnetic spectrum such as light and radio waves are used to gain information about distances and properties of components in the universe;

(D) model and describe how light years are used to measure distances and sizes in the universe; and

(E) research how scientific data are used as evidence to develop scientific theories to describe the origin of the universe.

(9) Earth and space. The student knows that natural events can impact Earth systems. The student is expected to:

(A) describe the historical development of evidence that supports plate tectonic theory;

(B) relate plate tectonics to the formation of crustal features; and

(C) interpret topographic maps and satellite views to identify land and erosional features and predict how these features may be reshaped by weathering.

(10) Earth and space. The student knows that climatic interactions exist among Earth, ocean, and weather systems. The student is expected to:

(A) recognize that the Sun provides the energy that drives convection within the atmosphere and oceans, producing winds and ocean currents;

(B) identify how global patterns of atmospheric movement influence local weather using weather maps that show high and low pressures and fronts; and

(C) identify the role of the oceans in the formation of weather systems such as hurricanes.

(11) Organisms and environments. The student knows that interdependence occurs among living systems and the environment and that human activities can affect these systems. The student is expected to:

(A) describe producer/consumer, predator/prey, and parasite/host relationships as they occur in food webs within marine, freshwater, and terrestrial ecosystems;

(B) investigate how organisms and populations in an ecosystem depend on and may compete for biotic and abiotic factors such as quantity of light, water, range of temperatures, or soil composition;

(C) explore how short- and long-term environmental changes affect organisms and traits in subsequent populations; and

(D) recognize human dependence on ocean systems and explain how human activities such as runoff, artificial reefs, or use of resources have modified these systems.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§112.31 - 112.39, 112.41

The new sections and amendment are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; §28.008, which authorizes the SBOE to incorporate college readiness standards and expectations approved by the commissioner of education and the Texas Higher Education Coordinating Board into the essential knowledge and skills identified by the board under §28.002(c); and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.008, and 28.025.

§112.32. *Aquatic Science, Beginning with School Year 2010-2011 (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Required prerequisite: one unit of high school Biology. Suggested prerequisite: Chemistry or concurrent enrollment in Chemistry. This course is recommended for students in Grades 10, 11, or 12.

(b) Introduction.

(1) Aquatic Science. In Aquatic Science, students study the interactions of biotic and abiotic components in aquatic environments, including impacts on aquatic systems. Investigations and field work in this course may emphasize fresh water or marine aspects of aquatic science depending primarily upon the natural resources available for study near the school. Students who successfully complete Aquatic Science will acquire knowledge about a variety of aquatic systems, conduct investigations and observations of aquatic environments, work collaboratively with peers, and develop critical-thinking and problem-solving skills.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a

system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations, including chemical, electrical, and fire safety, and safe handling of live and preserved organisms; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement investigative procedures, including asking questions, formulating testable hypotheses, and selecting, handling, and maintaining appropriate equipment and technology;

(F) collect data individually or collaboratively, make measurements with precision and accuracy, record values using appropriate units, and calculate statistically relevant quantities to describe data, including mean, median, and range;

(G) demonstrate the use of course apparatuses, equipment, techniques, and procedures;

(H) organize, analyze, evaluate, build models, make inferences, and predict trends from data;

(I) perform calculations using dimensional analysis, significant digits, and scientific notation; and

(J) communicate valid conclusions using essential vocabulary and multiple modes of expression such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research and technology on scientific thought, society, and the environment;

(E) describe the connection between aquatic science and future careers; and

(F) research and describe the history of aquatic science and contributions of scientists.

(4) Science concepts. Students know that aquatic environments are the product of Earth systems interactions. The student is expected to:

(A) identify key features and characteristics of atmospheric, geological, hydrological, and biological systems as they relate to aquatic environments;

(B) apply systems thinking to the examination of aquatic environments, including positive and negative feedback cycles; and

(C) collect and evaluate global environmental data using technology such as maps, visualizations, satellite data, Global Positioning System (GPS), Geographic Information System (GIS), weather balloons, buoys, etc.

(5) Science concepts. The student conducts long-term studies on local aquatic environments. Local natural environments are to be preferred over artificial or virtual environments. The student is expected to:

(A) evaluate data over a period of time from an established aquatic environment documenting seasonal changes and the behavior of organisms;

(B) collect baseline quantitative data, including pH, salinity, temperature, mineral content, nitrogen compounds, and turbidity from an aquatic environment;

(C) analyze interrelationships among producers, consumers, and decomposers in a local aquatic ecosystem; and

(D) identify the interdependence of organisms in an aquatic environment such as in a pond, river, lake, ocean, or aquifer and the biosphere.

(6) Science concepts. The student knows the role of cycles in an aquatic environment. The student is expected to:

(A) identify the role of carbon, nitrogen, water, and nutrient cycles in an aquatic environment, including upwellings and turnovers; and

(B) examine the interrelationships between aquatic systems and climate and weather, including El Niño and La Niña, currents, and hurricanes.

(7) Science concepts. The student knows the origin and use of water in a watershed. The student is expected to:

(A) identify sources and determine the amounts of water in a watershed, including rainfall, groundwater, and surface water;

(B) identify factors that contribute to how water flows through a watershed; and

(C) identify water quantity and quality in a local watershed.

(8) Science concepts. The student knows that geological phenomena and fluid dynamics affect aquatic systems. The student is expected to:

(A) demonstrate basic principles of fluid dynamics, including hydrostatic pressure, density, salinity, and buoyancy;

(B) identify interrelationships between ocean currents, climates, and geologic features; and

(C) describe and explain fluid dynamics in an upwelling and lake turnover.

(9) Science concepts. The student knows the types and components of aquatic ecosystems. The student is expected to:

(A) differentiate among freshwater, brackish, and salt-water ecosystems;

(B) identify the major properties and components of different marine and freshwater life zones; and

(C) identify biological, chemical, geological, and physical components of an aquatic life zone as they relate to the organisms in it.

(10) Science concepts. The student knows environmental adaptations of aquatic organisms. The student is expected to:

(A) classify different aquatic organisms using tools such as dichotomous keys;

(B) compare and describe how adaptations allow an organism to exist within an aquatic environment; and

(C) compare differences in adaptations of aquatic organisms to fresh water and marine environments.

(11) Science concepts. The student knows about the interdependence and interactions that occur in aquatic environments. The student is expected to:

(A) identify how energy flows and matter cycles through both fresh water and salt water aquatic systems, including food webs, chains, and pyramids; and

(B) evaluate the factors affecting aquatic population cycles.

(12) Science concepts. The student understands how human activities impact aquatic environments. The student is expected to:

(A) predict effects of chemical, organic, physical, and thermal changes from humans on the living and nonliving components of an aquatic ecosystem;

(B) analyze the cumulative impact of human population growth on an aquatic system;

(C) investigate the role of humans in unbalanced systems such as invasive species, fish farming, cultural eutrophication, or red tides;

(D) analyze and discuss how human activities such as fishing, transportation, dams, and recreation influence aquatic environments; and

(E) understand the impact of various laws and policies such as The Endangered Species Act, right of capture laws, or Clean Water Act on aquatic systems.

§112.33. *Astronomy, Beginning with School Year 2010-2011 (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Suggested prerequisite: one unit of high school science. This course is recommended for students in Grade 11 or 12.

(b) Introduction.

(1) Astronomy. In Astronomy, students conduct laboratory and field investigations, use scientific methods, and make informed decisions using critical thinking and scientific problem solving. Students study the following topics: astronomy in civilization, patterns and objects in the sky, our place in space, the moon, reasons for the seasons, planets, the sun, stars, galaxies, cosmology, and space exploration. Students who successfully complete Astronomy will acquire knowledge within a conceptual framework, conduct observations of the sky, work collaboratively, and develop critical-thinking skills.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory

power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement investigative procedures, including making observations, asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect data and make measurements with accuracy and precision;

(G) organize, analyze, evaluate, make inferences, and predict trends from data, including making new revised hypotheses when appropriate;

(H) communicate valid conclusions in writing, oral presentations, and through collaborative projects; and

(I) use astronomical technology such as telescopes, binoculars, sextants, computers, and software.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research on scientific thought, society, and the environment; and

(E) describe the connection between astronomy and future careers.

(4) Science concepts. The student recognizes the importance and uses of astronomy in civilization. The student is expected to:

(A) research and describe the use of astronomy in ancient civilizations such as the Egyptians, Mayans, Aztecs, Europeans, and the native Americans;

(B) research and describe the contributions of scientists to our changing understanding of astronomy, including Ptolemy, Copernicus, Tycho Brahe, Kepler, Galileo, Newton, Einstein, and Hubble, and the contribution of women astronomers, including Maria Mitchell and Henrietta Swan Leavitt;

(C) describe and explain the historical origins of the perceived patterns of constellations and the role of constellations in ancient and modern navigation; and

(D) explain the contributions of modern astronomy to today's society, including the identification of potential asteroid/comet impact hazards and the Sun's effects on communication, navigation, and high-tech devices.

(5) Science concepts. The student develops a familiarity with the sky. The student is expected to:

(A) observe and record the apparent movement of the Sun and Moon during the day;

(B) observe and record the apparent movement of the Moon, planets, and stars in the nighttime sky; and

(C) recognize and identify constellations such as Ursa Major, Ursa Minor, Orion, Cassiopeia, and constellations of the zodiac.

(6) Science concepts. The student knows our place in space. The student is expected to:

(A) compare and contrast the scale, size, and distance of the Sun, Earth, and Moon system through the use of data and modeling;

(B) compare and contrast the scale, size, and distance of objects in the solar system such as the Sun and planets through the use of data and modeling;

(C) examine the scale, size, and distance of the stars, Milky Way, and other galaxies through the use of data and modeling;

(D) relate apparent versus absolute magnitude to the distances of celestial objects; and

(E) demonstrate the use of units of measurement in astronomy, including Astronomical Units and light years.

(7) Science concepts. The student knows the role of the Moon in the Sun, Earth, and Moon system. The student is expected to:

(A) observe and record data about lunar phases and use that information to model the Sun, Earth, and Moon system;

(B) illustrate the cause of lunar phases by showing positions of the Moon relative to Earth and the Sun for each phase, including new moon, waxing crescent, first quarter, waxing gibbous, full moon, waning gibbous, third quarter, and waning crescent;

(C) identify and differentiate the causes of lunar and solar eclipses, including differentiating between lunar phases and eclipses; and

(D) identify the effects of the Moon on tides.

(8) Science concepts. The student knows the reasons for the seasons. The student is expected to:

(A) recognize that seasons are caused by the tilt of Earth's axis;

(B) explain how latitudinal position affects the length of day and night throughout the year;

(C) recognize that the angle of incidence of sunlight determines the concentration of solar energy received on Earth at a particular location; and

(D) examine the relationship of the seasons to equinoxes, solstices, the tropics, and the equator.

(9) Science concepts. The student knows that planets of different size, composition, and surface features orbit around the Sun. The student is expected to:

(A) compare and contrast the factors essential to life on Earth such as temperature, water, mass, and gases to conditions on other planets;

(B) compare the planets in terms of orbit, size, composition, rotation, atmosphere, natural satellites, and geological activity;

(C) relate the role of Newton's law of universal gravitation to the motion of the planets around the Sun and to the motion of natural and artificial satellites around the planets; and

(D) explore the origins and significance of small solar system bodies, including asteroids, comets, and Kuiper belt objects.

(10) Science concepts. The student knows the role of the Sun as the star in our solar system. The student is expected to:

(A) identify the approximate mass, size, motion, temperature, structure, and composition of the Sun;

(B) distinguish between nuclear fusion and nuclear fission, and identify the source of energy within the Sun as nuclear fusion of hydrogen to helium;

(C) describe the eleven-year solar cycle and the significance of sunspots; and

(D) analyze solar magnetic storm activity, including coronal mass ejections, prominences, flares, and sunspots.

(11) Science concepts. The student knows the characteristics and life cycle of stars. The student is expected to:

(A) identify the characteristics of main sequence stars, including surface temperature, age, relative size, and composition;

(B) characterize star formation in stellar nurseries from giant molecular clouds, to protostars, to the development of main sequence stars;

(C) evaluate the relationship between mass and fusion on the dying process and properties of stars;

(D) differentiate among the end states of stars, including white dwarfs, neutron stars, and black holes;

(E) compare how the mass and gravity of a main sequence star will determine its end state as a white dwarf, neutron star, or black hole;

(F) relate the use of spectroscopy in obtaining physical data on celestial objects such as temperature, chemical composition, and relative motion; and

(G) use the Hertzsprung-Russell diagram to plot and examine the life cycle of stars from birth to death.

(12) Science concepts. The student knows the variety and properties of galaxies. The student is expected to:

(A) describe characteristics of galaxies;

(B) recognize the type, structure, and components of our Milky Way galaxy and location of our solar system within it; and

(C) compare and contrast the different types of galaxies, including spiral, elliptical, irregular, and dwarf.

(13) Science concepts. The student knows the scientific theories of cosmology. The student is expected to:

(A) research and describe the historical development of the Big Bang Theory, including red shift, cosmic microwave background radiation, and other supporting evidence;

(B) research and describe current theories of the evolution of the universe, including estimates for the age of the universe; and

(C) research and describe scientific hypotheses of the fate of the universe, including open and closed universes and the role of dark matter and dark energy.

(14) Science concepts. The student recognizes the benefits and challenges of space exploration to the study of the universe. The student is expected to:

(A) identify and explain the contributions of human space flight and future plans and challenges;

(B) recognize the advancement of knowledge in astronomy through robotic space flight;

(C) analyze the importance of ground-based technology in astronomical studies;

(D) recognize the importance of space telescopes to the collection of astronomical data across the electromagnetic spectrum; and

(E) demonstrate an awareness of new developments and discoveries in astronomy.

§112.34. Biology, Beginning with School Year 2010-2011 (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisites: none. This course is recommended for students in Grade 9, 10, or 11.

(b) Introduction.

(1) Biology. In Biology, students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students in Biology study a variety of topics that include: structures and functions of cells and viruses; growth and development of organisms; cells, tissues, and organs; nucleic acids and genetics; biological evolution; taxonomy; metabolism and energy transfers in living organisms; living systems; homeostasis; and ecosystems and the environment.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(5) Science, systems, and models. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts laboratory and field investigations using

safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods and equipment during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but they may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement descriptive, comparative, and experimental investigations, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect and organize qualitative and quantitative data and make measurements with accuracy and precision using tools such as calculators, spreadsheet software, data-collecting probes, computers, standard laboratory glassware, microscopes, various prepared slides, stereoscopes, metric rulers, electronic balances, gel electrophoresis apparatuses, micropipettors, hand lenses, Celsius thermometers, hot plates, lab notebooks or journals, timing devices, cameras, Petri dishes, lab incubators, dissection equipment, meter sticks, and models, diagrams, or samples of biological specimens or structures;

(G) analyze, evaluate, make inferences, and predict trends from data; and

(H) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of scientific research on society and the environment;

(E) evaluate models according to their limitations in representing biological objects or events; and

(F) research and describe the history of biology and contributions of scientists.

(4) Science concepts. The student knows that cells are the basic structures of all living things with specialized parts that perform specific functions and that viruses are different from cells. The student is expected to:

(A) compare and contrast prokaryotic and eukaryotic cells;

(B) investigate and explain cellular processes, including homeostasis, energy conversions, transport of molecules, and synthesis of new molecules; and

(C) compare the structures of viruses to cells, describe viral reproduction, and describe the role of viruses in causing diseases such as human immunodeficiency virus (HIV) and influenza.

(5) Science concepts. The student knows how an organism grows and the importance of cell differentiation. The student is expected to:

(A) describe the stages of the cell cycle, including deoxyribonucleic acid (DNA) replication and mitosis, and the importance of the cell cycle to the growth of organisms;

(B) examine specialized cells, including roots, stems, and leaves of plants; and animal cells such as blood, muscle, and epithelium;

(C) describe the roles of DNA, ribonucleic acid (RNA), and environmental factors in cell differentiation; and

(D) recognize that disruptions of the cell cycle lead to diseases such as cancer.

(6) Science concepts. The student knows the mechanisms of genetics, including the role of nucleic acids and the principles of Mendelian Genetics. The student is expected to:

(A) identify components of DNA, and describe how information for specifying the traits of an organism is carried in the DNA;

(B) recognize that components that make up the genetic code are common to all organisms;

(C) explain the purpose and process of transcription and translation using models of DNA and RNA;

(D) recognize that gene expression is a regulated process;

(E) identify and illustrate changes in DNA and evaluate the significance of these changes;

(F) predict possible outcomes of various genetic combinations such as monohybrid crosses, dihybrid crosses and non-Mendelian inheritance;

(G) recognize the significance of meiosis to sexual reproduction; and

(H) describe how techniques such as DNA fingerprinting, genetic modifications, and chromosomal analysis are used to study the genomes of organisms.

(7) Science concepts. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life. The student is expected to:

(A) analyze and evaluate how evidence of common ancestry among groups is provided by the fossil record, biogeography, and homologies, including anatomical, molecular, and developmental;

(B) analyze and evaluate scientific explanations concerning any data of sudden appearance, stasis, and sequential nature of groups in the fossil record;

(C) analyze and evaluate how natural selection produces change in populations, not individuals;

(D) analyze and evaluate how the elements of natural selection, including inherited variation, the potential of a population to produce more offspring than can survive, and a finite supply of environmental resources, result in differential reproductive success;

(E) analyze and evaluate the relationship of natural selection to adaptation and to the development of diversity in and among species;

(F) analyze and evaluate the effects of other evolutionary mechanisms, including genetic drift, gene flow, mutation, and recombination; and

(G) analyze and evaluate scientific explanations concerning the complexity of the cell.

(8) Science concepts. The student knows that taxonomy is a branching classification based on the shared characteristics of organisms and can change as new discoveries are made. The student is expected to:

(A) define taxonomy and recognize the importance of a standardized taxonomic system to the scientific community;

(B) categorize organisms using a hierarchical classification system based on similarities and differences shared among groups; and

(C) compare characteristics of taxonomic groups, including archaea, bacteria, protists, fungi, plants, and animals.

(9) Science concepts. The student knows the significance of various molecules involved in metabolic processes and energy conversions that occur in living organisms. The student is expected to:

(A) compare the structures and functions of different types of biomolecules, including carbohydrates, lipids, proteins, and nucleic acids;

(B) compare the reactants and products of photosynthesis and cellular respiration in terms of energy and matter;

(C) identify and investigate the role of enzymes; and

(D) analyze and evaluate the evidence regarding formation of simple organic molecules and their organization into long complex molecules having information such as the DNA molecule for self-replicating life.

(10) Science concepts. The student knows that biological systems are composed of multiple levels. The student is expected to:

(A) describe the interactions that occur among systems that perform the functions of regulation, nutrient absorption, reproduction, and defense from injury or illness in animals;

(B) describe the interactions that occur among systems that perform the functions of transport, reproduction, and response in plants; and

(C) analyze the levels of organization in biological systems and relate the levels to each other and to the whole system.

(11) Science concepts. The student knows that biological systems work to achieve and maintain balance. The student is expected to:

(A) describe the role of internal feedback mechanisms in the maintenance of homeostasis;

(B) investigate and analyze how organisms, populations, and communities respond to external factors;

(C) summarize the role of microorganisms in both maintaining and disrupting the health of both organisms and ecosystems; and

(D) describe how events and processes that occur during ecological succession can change populations and species diversity.

(12) Science concepts. The student knows that interdependence and interactions occur within an environmental system. The student is expected to:

(A) interpret relationships, including predation, parasitism, commensalism, mutualism, and competition among organisms;

(B) compare variations and adaptations of organisms in different ecosystems;

(C) analyze the flow of matter and energy through trophic levels using various models, including food chains, food webs, and ecological pyramids;

(D) recognize that long-term survival of species is dependent on changing resource bases that are limited;

(E) describe the flow of matter through the carbon and nitrogen cycles and explain the consequences of disrupting these cycles; and

(F) describe how environmental change can impact ecosystem stability.

§112.35. Chemistry, Beginning with School Year 2010-2011 (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Required prerequisites: one unit of high school science and Algebra I. Suggested prerequisite: completion of or concurrent enrollment in a second year of math. This course is recommended for students in Grade 10, 11, or 12.

(b) Introduction.

(1) Chemistry. In Chemistry, students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include characteristics of matter, use of the Periodic Table, development of atomic theory and chemical bonding, chemical stoichiometry, gas laws, solution chemistry, thermochemistry, and nuclear chemistry. Students will investigate how chemistry is an integral part of our daily lives.

(2) Nature of Science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations, including the appropriate use of safety showers, eyewash fountains, safety goggles, and fire extinguishers;

(B) know specific hazards of chemical substances such as flammability, corrosiveness, and radioactivity as summarized on the Material Safety Data Sheets (MSDS); and

(C) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods to solve investigative questions. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) plan and implement investigative procedures, including asking questions, formulating testable hypotheses, and selecting equipment and technology, including graphing calculators, computers and probes, sufficient scientific glassware such as beakers, Erlenmeyer flasks, pipettes, graduated cylinders, volumetric flasks, safety goggles, and burettes, electronic balances, and an adequate supply of consumable chemicals;

(F) collect data and make measurements with accuracy and precision;

(G) express and manipulate chemical quantities using scientific conventions and mathematical procedures, including dimensional analysis, scientific notation, and significant figures;

(H) organize, analyze, evaluate, make inferences, and predict trends from data; and

(I) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphs, journals, summaries, oral reports, and technology-based reports.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research on scientific thought, society, and the environment;

(E) describe the connection between chemistry and future careers; and

(F) research and describe the history of chemistry and contributions of scientists.

(4) Science concepts. The student knows the characteristics of matter and can analyze the relationships between chemical and physical changes and properties. The student is expected to:

(A) differentiate between physical and chemical changes and properties;

(B) identify extensive and intensive properties;

(C) compare solids, liquids, and gases in terms of compressibility, structure, shape, and volume; and

(D) classify matter as pure substances or mixtures through investigation of their properties.

(5) Science concepts. The student understands the historical development of the Periodic Table and can apply its predictive power. The student is expected to:

(A) explain the use of chemical and physical properties in the historical development of the Periodic Table;

(B) use the Periodic Table to identify and explain the properties of chemical families, including alkali metals, alkaline earth metals, halogens, noble gases, and transition metals; and

(C) use the Periodic Table to identify and explain periodic trends, including atomic and ionic radii, electronegativity, and ionization energy.

(6) Science concepts. The student knows and understands the historical development of atomic theory. The student is expected to:

(A) understand the experimental design and conclusions used in the development of modern atomic theory, including

Dalton's Postulates, Thomson's discovery of electron properties, Rutherford's nuclear atom, and Bohr's nuclear atom;

(B) understand the electromagnetic spectrum and the mathematical relationships between energy, frequency, and wavelength of light;

(C) calculate the wavelength, frequency, and energy of light using Planck's constant and the speed of light;

(D) use isotopic composition to calculate average atomic mass of an element; and

(E) express the arrangement of electrons in atoms through electron configurations and Lewis valence electron dot structures.

(7) Science concepts. The student knows how atoms form ionic, metallic, and covalent bonds. The student is expected to:

(A) name ionic compounds containing main group or transition metals, covalent compounds, acids, and bases, using International Union of Pure and Applied Chemistry (IUPAC) nomenclature rules;

(B) write the chemical formulas of common polyatomic ions, ionic compounds containing main group or transition metals, covalent compounds, acids, and bases;

(C) construct electron dot formulas to illustrate ionic and covalent bonds;

(D) describe the nature of metallic bonding and apply the theory to explain metallic properties such as thermal and electrical conductivity, malleability, and ductility; and

(E) predict molecular structure for molecules with linear, trigonal planar, or tetrahedral electron pair geometries using Valence Shell Electron Pair Repulsion (VSEPR) theory.

(8) Science concepts. The student can quantify the changes that occur during chemical reactions. The student is expected to:

(A) define and use the concept of a mole;

(B) use the mole concept to calculate the number of atoms, ions, or molecules in a sample of material;

(C) calculate percent composition and empirical and molecular formulas;

(D) use the law of conservation of mass to write and balance chemical equations; and

(E) perform stoichiometric calculations, including determination of mass relationships between reactants and products, calculation of limiting reagents, and percent yield.

(9) Science concepts. The student understands the principles of ideal gas behavior, kinetic molecular theory, and the conditions that influence the behavior of gases. The student is expected to:

(A) describe and calculate the relations between volume, pressure, number of moles, and temperature for an ideal gas as described by Boyle's law, Charles' law, Avogadro's law, Dalton's law of partial pressure, and the ideal gas law;

(B) perform stoichiometric calculations, including determination of mass and volume relationships between reactants and products for reactions involving gases; and

(C) describe the postulates of kinetic molecular theory.

(10) Science concepts. The student understands and can apply the factors that influence the behavior of solutions. The student is expected to:

(A) describe the unique role of water in chemical and biological systems;

(B) develop and use general rules regarding solubility through investigations with aqueous solutions;

(C) calculate the concentration of solutions in units of molarity;

(D) use molarity to calculate the dilutions of solutions;

(E) distinguish between types of solutions such as electrolytes and nonelectrolytes and unsaturated, saturated, and supersaturated solutions;

(F) investigate factors that influence solubilities and rates of dissolution such as temperature, agitation, and surface area;

(G) define acids and bases and distinguish between Arrhenius and Bronsted-Lowry definitions and predict products in acid base reactions that form water;

(H) understand and differentiate among acid-base reactions, precipitation reactions, and oxidation-reduction reactions;

(I) define pH and use the hydrogen or hydroxide ion concentrations to calculate the pH of a solution; and

(J) distinguish between degrees of dissociation for strong and weak acids and bases.

(11) Science concepts. The student understands the energy changes that occur in chemical reactions. The student is expected to:

(A) understand energy and its forms, including kinetic, potential, chemical, and thermal energies;

(B) understand the law of conservation of energy and the processes of heat transfer;

(C) use thermochemical equations to calculate energy changes that occur in chemical reactions and classify reactions as exothermic or endothermic;

(D) perform calculations involving heat, mass, temperature change, and specific heat; and

(E) use calorimetry to calculate the heat of a chemical process.

(12) Science concepts. The student understands the basic processes of nuclear chemistry. The student is expected to:

(A) describe the characteristics of alpha, beta, and gamma radiation;

(B) describe radioactive decay process in terms of balanced nuclear equations; and

(C) compare fission and fusion reactions.

§112.36. Earth and Space Science, Beginning with School Year 2010-2011 (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Required prerequisites: three units of science, one of which may be taken concurrently, and three units of mathematics, one of which may be taken concurrently. This course is recommended for students in Grade 12 but may be taken by students in Grade 11.

(b) Introduction.

(1) Earth and Space Science (ESS). ESS is a capstone course designed to build on students' prior scientific and academic knowledge and skills to develop understanding of Earth's system in space and time.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) ESS themes. An Earth systems approach to the themes of Earth in space and time, solid Earth, and fluid Earth defined the selection and development of the concepts described in this paragraph.

(A) Earth in space and time. Earth has a long, complex, and dynamic history. Advances in technologies continue to further our understanding of the origin, evolution, and properties of Earth and planetary systems within a chronological framework. The origin and distribution of resources that sustain life on Earth are the result of interactions among Earth's subsystems over billions of years.

(B) Solid Earth. The geosphere is a collection of complex, interacting, dynamic subsystems linking Earth's interior to its surface. The geosphere is composed of materials that move between subsystems at various rates driven by the uneven distribution of thermal energy. These dynamic processes are responsible for the origin and distribution of resources as well as geologic hazards that impact society.

(C) Fluid Earth. The fluid Earth consists of the hydrosphere, cryosphere, and atmosphere subsystems. These subsystems interact with the biosphere and geosphere resulting in complex biogeochemical and geochemical cycles. The global ocean is the thermal energy reservoir for surface processes and, through interactions with the atmosphere, influences climate. Understanding these interactions and cycles over time has implications for life on Earth.

(6) Earth and space science strands. ESS has three strands used throughout each of the three themes: systems, energy, and relevance.

(A) Systems. A system is a collection of interacting physical, chemical, and biological processes that involves the flow of matter and energy on different temporal and spatial scales. Earth's system is composed of interdependent and interacting subsystems of the geosphere, hydrosphere, atmosphere, cryosphere, and biosphere within a larger planetary and stellar system. Change and constancy occur in Earth's system and can be observed, measured as patterns and cycles, and described or presented in models used to predict how Earth's system changes over time.

(B) Energy. The uneven distribution of Earth's internal and external thermal energy is the driving force for complex, dynamic, and continuous interactions and cycles in Earth's subsystems.

These interactions are responsible for the movement of matter within and between the subsystems resulting in, for example, plate motions and ocean-atmosphere circulation.

(C) **Relevance.** The interacting components of Earth's system change by both natural and human-influenced processes. Natural processes include hazards such as flooding, earthquakes, volcanoes, hurricanes, meteorite impacts, and climate change. Some human-influenced processes such as pollution and unsustainable use of Earth's natural resources may damage Earth's system. Examples include climate change, soil erosion, air and water pollution, and biodiversity loss. The time scale of these changes and their impact on human society must be understood to make wise decisions concerning the use of the land, water, air, and natural resources. Proper stewardship of Earth will prevent unnecessary degradation and destruction of Earth's subsystems and diminish detrimental impacts to individuals and society.

(c) **Knowledge and skills.**

(1) **Scientific processes.** The student conducts laboratory and field investigations, for at least 40% of instructional time, using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations;

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials; and

(C) use the school's technology and information systems in a wise and ethical manner.

(2) **Scientific processes.** The student uses scientific methods during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) demonstrate the use of course equipment, techniques, and procedures, including computers and web-based computer applications;

(F) use a wide variety of additional course apparatuses, equipment, techniques, and procedures as appropriate such as satellite imagery and other remote sensing data, Geographic Information Systems (GIS), Global Positioning System (GPS), scientific probes, microscopes, telescopes, modern video and image libraries, weather stations, fossil and rock kits, bar magnets, coiled springs, wave simulators, tectonic plate models, and planetary globes;

(G) organize, analyze, evaluate, make inferences, and predict trends from data;

(H) use mathematical procedures such as algebra, statistics, scientific notation, and significant figures to analyze data using the International System (SI) units; and

(I) communicate valid conclusions supported by data using several formats such as technical reports, lab reports, labeled drawings, graphic organizers, journals, presentations, and technical posters.

(3) **Scientific processes.** The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research on scientific thought, society, and public policy;

(E) explore careers and collaboration among scientists in Earth and space sciences; and

(F) learn and understand the contributions of scientists to the historical development of Earth and space sciences.

(4) **Earth in space and time.** The student knows how Earth-based and space-based astronomical observations reveal differing theories about the structure, scale, composition, origin, and history of the universe. The student is expected to:

(A) evaluate the evidence concerning the Big Bang model such as red shift and cosmic microwave background radiation and current theories of the evolution of the universe, including estimates for the age of the universe;

(B) explain how the Sun and other stars transform matter into energy through nuclear fusion; and

(C) investigate the process by which a supernova can lead to the formation of successive generation stars and planets.

(5) **Earth in space and time.** The student understands the solar nebular accretionary disk model. The student is expected to:

(A) analyze how gravitational condensation of solar nebular gas and dust can lead to the accretion of planetesimals and protoplanets;

(B) investigate thermal energy sources, including kinetic heat of impact accretion, gravitational compression, and radioactive decay, which are thought to allow protoplanet differentiation into layers;

(C) contrast the characteristics of comets, asteroids, and meteoroids and their positions in the solar system, including the orbital regions of the terrestrial planets, the asteroid belt, gas giants, Kuiper Belt, and Oort Cloud;

(D) explore the historical and current hypotheses for the origin of the Moon, including the collision of Earth with a Mars-sized planetesimal;

(E) compare terrestrial planets to gas-giant planets in the solar system, including structure, composition, size, density, orbit, surface features, tectonic activity, temperature, and suitability for life; and

(F) compare extra-solar planets with planets in our solar system and describe how such planets are detected.

(6) Earth in space and time. The student knows the evidence for how Earth's atmospheres, hydrosphere, and geosphere formed and changed through time. The student is expected to:

(A) analyze the changes of Earth's atmosphere that could have occurred through time from the original hydrogen-helium atmosphere, the carbon dioxide-water vapor-methane atmosphere, and the current nitrogen-oxygen atmosphere;

(B) evaluate the role of volcanic outgassing and impact of water-bearing comets in developing Earth's atmosphere and hydrosphere;

(C) investigate how the formation of atmospheric oxygen and the ozone layer impacted the formation of the geosphere and biosphere; and

(D) evaluate the evidence that Earth's cooling led to tectonic activity, resulting in continents and ocean basins.

(7) Earth in space and time. The student knows that scientific dating methods of fossils and rock sequences are used to construct a chronology of Earth's history expressed in the geologic time scale. The student is expected to:

(A) evaluate relative dating methods using original horizontality, rock superposition, lateral continuity, cross-cutting relationships, unconformities, index fossils, and biozones based on fossil succession to determine chronological order;

(B) calculate the ages of igneous rocks from Earth and the Moon and meteorites using radiometric dating methods; and

(C) understand how multiple dating methods are used to construct the geologic time scale, which represents Earth's approximate 4.6-billion-year history.

(8) Earth in space and time. The student knows that fossils provide evidence for geological and biological evolution. Students are expected to:

(A) analyze and evaluate a variety of fossil types such as transitional fossils, proposed transitional fossils, fossil lineages, and significant fossil deposits with regard to their appearance, completeness, and alignment with scientific explanations in light of this fossil data;

(B) explain how sedimentation, fossilization, and speciation affect the degree of completeness of the fossil record; and

(C) evaluate the significance of the terminal Permian and Cretaceous mass extinction events, including adaptive radiations of organisms after the events.

(9) Solid Earth. The student knows Earth's interior is differentiated chemically, physically, and thermally. The student is expected to:

(A) evaluate heat transfer through Earth's subsystems by radiation, convection, and conduction and include its role in plate tectonics, volcanism, ocean circulation, weather, and climate;

(B) examine the chemical, physical, and thermal structure of Earth's crust, mantle, and core, including the lithosphere and asthenosphere;

(C) explain how scientists use geophysical methods such as seismic wave analysis, gravity, and magnetism to interpret Earth's structure; and

(D) describe the formation and structure of Earth's magnetic field, including its interaction with charged solar particles to form the Van Allen belts and auroras.

(10) Solid Earth. The student knows that plate tectonics is the global mechanism for major geologic processes and that heat transfer, governed by the principles of thermodynamics, is the driving force. The student is expected to:

(A) investigate how new conceptual interpretations of data and innovative geophysical technologies led to the current theory of plate tectonics;

(B) describe how heat and rock composition affect density within Earth's interior and how density influences the development and motion of Earth's tectonic plates;

(C) explain how plate tectonics accounts for geologic processes and features, including sea floor spreading, ocean ridges and rift valleys, subduction zones, earthquakes, volcanoes, mountain ranges, hot spots, and hydrothermal vents;

(D) calculate the motion history of tectonic plates using equations relating rate, time, and distance to predict future motions, locations, and resulting geologic features;

(E) distinguish the location, type, and relative motion of convergent, divergent, and transform plate boundaries using evidence from the distribution of earthquakes and volcanoes; and

(F) evaluate the role of plate tectonics with respect to long-term global changes in Earth's subsystems such as continental buildup, glaciation, sea level fluctuations, mass extinctions, and climate change.

(11) Solid Earth. The student knows that the geosphere continuously changes over a range of time scales involving dynamic and complex interactions among Earth's subsystems. The student is expected to:

(A) compare the roles of erosion and deposition through the actions of water, wind, ice, gravity, and igneous activity by lava in constantly reshaping Earth's surface;

(B) explain how plate tectonics accounts for geologic surface processes and features, including folds, faults, sedimentary basin formation, mountain building, and continental accretion;

(C) analyze changes in continental plate configurations such as Pangaea and their impact on the biosphere, atmosphere, and hydrosphere through time;

(D) interpret Earth surface features using a variety of methods such as satellite imagery, aerial photography, and topographic and geologic maps using appropriate technologies; and

(E) evaluate the impact of changes in Earth's subsystems on humans such as earthquakes, tsunamis, volcanic eruptions, hurricanes, flooding, and storm surges and the impact of humans on Earth's subsystems such as population growth, fossil fuel burning, and use of fresh water.

(12) Solid Earth. The student knows that Earth contains energy, water, mineral, and rock resources and that use of these resources impacts Earth's subsystems. The student is expected to:

(A) evaluate how the use of energy, water, mineral, and rock resources affects Earth's subsystems;

(B) describe the formation of fossil fuels, including petroleum and coal;

(C) discriminate between renewable and nonrenewable resources based upon rate of formation and use;

(D) analyze the economics of resources from discovery to disposal, including technological advances, resource type, concentration and location, waste disposal and recycling, and environmental costs; and

(E) explore careers that involve the exploration, extraction, production, use, and disposal of Earth's resources.

(13) Fluid Earth. The student knows that the fluid Earth is composed of the hydrosphere, cryosphere, and atmosphere subsystems that interact on various time scales with the biosphere and geosphere. The student is expected to:

(A) quantify the components and fluxes within the hydrosphere such as changes in polar ice caps and glaciers, salt water incursions, and groundwater levels in response to precipitation events or excessive pumping;

(B) analyze how global ocean circulation is the result of wind, tides, the Coriolis effect, water density differences, and the shape of the ocean basins;

(C) analyze the empirical relationship between the emissions of carbon dioxide, atmospheric carbon dioxide levels, and the average global temperature trends over the past 150 years;

(D) discuss mechanisms and causes such as selective absorbers, major volcanic eruptions, solar luminance, giant meteorite impacts, and human activities that result in significant changes in Earth's climate;

(E) investigate the causes and history of eustatic sea-level changes that result in transgressive and regressive sedimentary sequences; and

(F) discuss scientific hypotheses for the origin of life by abiotic chemical processes in an aqueous environment through complex geochemical cycles given the complexity of living systems.

(14) Fluid Earth. The student knows that Earth's global ocean stores solar energy and is a major driving force for weather and climate through complex atmospheric interactions. The student is expected to:

(A) analyze the uneven distribution of solar energy on Earth's surface, including differences in atmospheric transparency, surface albedo, Earth's tilt, duration of insolation, and differences in atmospheric and surface absorption of energy;

(B) investigate how the atmosphere is heated from Earth's surface due to absorption of solar energy, which is re-radiated as thermal energy and trapped by selective absorbers; and

(C) explain how thermal energy transfer between the ocean and atmosphere drives surface currents, thermohaline currents, and evaporation that influence climate.

(15) Fluid Earth. The student knows that interactions among Earth's five subsystems influence climate and resource availability, which affect Earth's habitability. The student is expected to:

(A) describe how changing surface-ocean conditions, including El Niño-Southern Oscillation, affect global weather and climate patterns;

(B) investigate evidence such as ice cores, glacial striations, and fossils for climate variability and its use in developing computer models to explain present and predict future climates;

(C) quantify the dynamics of surface and groundwater movement such as recharge, discharge, evapotranspiration, storage, residence time, and sustainability;

(D) explain the global carbon cycle, including how carbon exists in different forms within the five subsystems and how these forms affect life; and

(E) analyze recent global ocean temperature data to predict the consequences of changing ocean temperature on evaporation, sea level, algal growth, coral bleaching, hurricane intensity, and biodiversity.

§112.37. *Environmental Systems, Beginning with School Year 2010-2011 (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Suggested prerequisite: one unit high school life science and one unit of high school physical science. This course is recommended for students in Grade 11 or 12.

(b) Introduction.

(1) Environmental Systems. In Environmental Systems, students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include: biotic and abiotic factors in habitats, ecosystems and biomes, interrelationships among resources and an environmental system, sources and flow of energy through an environmental system, relationship between carrying capacity and changes in populations and ecosystems, and changes in environments.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts hands-on laboratory and field investigations

using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations, including appropriate first aid responses to accidents that could occur in the field such as insect stings, animal bites, overheating, sprains, and breaks; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) follow or plan and implement investigative procedures, including making observations, asking questions, formulating testable hypotheses, and selecting equipment and technology;

(F) collect data individually or collaboratively, make measurements with precision and accuracy, record values using appropriate units, and calculate statistically relevant quantities to describe data, including mean, median, and range;

(G) demonstrate the use of course apparatuses, equipment, techniques, and procedures, including meter sticks, rulers, pipettes, graduated cylinders, triple beam balances, timing devices, pH meters or probes, thermometers, calculators, computers, Internet access, turbidity testing devices, hand magnifiers, work and disposable gloves, compasses, first aid kits, binoculars, field guides, water quality test kits or probes, soil test kits or probes, 100-foot appraiser's tapes, tarps, shovels, trowels, screens, buckets, and rock and mineral samples;

(H) use a wide variety of additional course apparatuses, equipment, techniques, materials, and procedures as appropriate such as air quality testing devices, cameras, flow meters, Global Positioning System (GPS) units, Geographic Information System (GIS) software, computer models, densimeters, clinometers, and field journals;

(I) organize, analyze, evaluate, build models, make inferences, and predict trends from data;

(J) perform calculations using dimensional analysis, significant digits, and scientific notation; and

(K) communicate valid conclusions supported by the data through methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research on scientific thought, society, and the environment;

(E) describe the connection between environmental science and future careers; and

(F) research and describe the history of environmental science and contributions of scientists.

(4) Science concepts. The student knows the relationships of biotic and abiotic factors within habitats, ecosystems, and biomes. The student is expected to:

(A) identify native plants and animals using a dichotomous key;

(B) assess the role of native plants and animals within a local ecosystem and compare them to plants and animals in ecosystems within four other biomes;

(C) diagram abiotic cycles, including the rock, hydrologic, carbon, and nitrogen cycles;

(D) make observations and compile data about fluctuations in abiotic cycles and evaluate the effects of abiotic factors on local ecosystems and local biomes;

(E) measure the concentration of solute, solvent, and solubility of dissolved substances such as dissolved oxygen, chlorides, and nitrates and describe their impact on an ecosystem;

(F) predict how the introduction or removal of an invasive species may alter the food chain and affect existing populations in an ecosystem;

(G) predict how species extinction may alter the food chain and affect existing populations in an ecosystem; and

(H) research and explain the causes of species diversity and predict changes that may occur in an ecosystem if species and genetic diversity is increased or reduced.

(5) Science concepts. The student knows the interrelationships among the resources within the local environmental system. The student is expected to:

(A) summarize methods of land use and management and describe its effects on land fertility;

(B) identify source, use, quality, management, and conservation of water;

(C) document the use and conservation of both renewable and non-renewable resources as they pertain to sustainability;

(D) identify renewable and non-renewable resources that must come from outside an ecosystem such as food, water, lumber, and energy;

(E) analyze and evaluate the economic significance and interdependence of resources within the environmental system; and

(F) evaluate the impact of waste management methods such as reduction, reuse, recycling, and composting on resource availability.

(6) Science concepts. The student knows the sources and flow of energy through an environmental system. The student is expected to:

(A) define and identify the components of the geosphere, hydrosphere, cryosphere, atmosphere, and biosphere and the interactions among them;

(B) describe and compare renewable and non-renewable energy derived from natural and alternative sources such as oil, natural gas, coal, nuclear, solar, geothermal, hydroelectric, and wind;

(C) explain the flow of energy in an ecosystem, including conduction, convection, and radiation;

(D) investigate and explain the effects of energy transformations in terms of the laws of thermodynamics within an ecosystem; and

(E) investigate and identify energy interactions in an ecosystem.

(7) Science concepts. The student knows the relationship between carrying capacity and changes in populations and ecosystems. The student is expected to:

(A) relate carrying capacity to population dynamics;

(B) calculate birth rates and exponential growth of populations;

(C) analyze and predict the effects of non-renewable resource depletion; and

(D) analyze and make predictions about the impact on populations of geographic locales due to diseases, birth and death rates, urbanization, and natural events such as migration and seasonal changes.

(8) Science concepts. The student knows that environments change naturally. The student is expected to:

(A) analyze and describe the effects on areas impacted by natural events such as tectonic movement, volcanic events, fires, tornadoes, hurricanes, flooding, tsunamis, and population growth;

(B) explain how regional changes in the environment may have a global effect;

(C) examine how natural processes such as succession and feedback loops restore habitats and ecosystems;

(D) describe how temperature inversions impact weather conditions, including El Niño and La Niña oscillations; and

(E) analyze the impact of temperature inversions on global warming, ice cap and glacial melting, and changes in ocean currents and surface temperatures.

(9) Science concepts. The student knows the impact of human activities on the environment. The student is expected to:

(A) identify causes of air, soil, and water pollution, including point and nonpoint sources;

(B) investigate the types of air, soil, and water pollution such as chlorofluorocarbons, carbon dioxide, pH, pesticide runoff, thermal variations, metallic ions, heavy metals, and nuclear waste;

(C) examine the concentrations of air, soil, and water pollutants using appropriate units;

(D) describe the effect of pollution on global warming, glacial and ice cap melting, greenhouse effect, ozone layer, and aquatic viability;

(E) evaluate the effect of human activities, including habitat restoration projects, species preservation efforts, nature conservancy groups, hunting, fishing, ecotourism, all terrain vehicles, and small personal watercraft, on the environment;

(F) evaluate cost-benefit trade-offs of commercial activities such as municipal development, farming, deforestation, over-harvesting, and mining;

(G) analyze how ethical beliefs can be used to influence scientific practices such as methods for increasing food production;

(H) analyze and evaluate different views on the existence of global warming;

(I) discuss the impact of research and technology on social ethics and legal practices in situations such as the design of new buildings, recycling, or emission standards;

(J) research the advantages and disadvantages of "going green" such as organic gardening and farming, natural methods of pest control, hydroponics, xeriscaping, energy-efficient homes and appliances, and hybrid cars;

(K) analyze past and present local, state, and national legislation, including Texas automobile emissions regulations, the National Park Service Act, the Clean Air Act, the Clean Water Act, the Soil and Water Resources Conservation Act, and the Endangered Species Act; and

(L) analyze past and present international treaties and protocols such as the environmental Antarctic Treaty System, Montreal Protocol, and Kyoto Protocol.

§112.38. *Integrated Physics and Chemistry, Beginning with School Year 2010-2011 (One Credit).*

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisites: none. This course is recommended for students in Grade 9 or 10.

(b) Introduction.

(1) Integrated Physics and Chemistry. In Integrated Physics and Chemistry, students conduct laboratory and field investigations, use scientific methods during investigation, and make informed decisions using critical thinking and scientific problem solving. This course integrates the disciplines of physics and chemistry in the following topics: force, motion, energy, and matter.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation are experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods (sci-

entific methods) and ethical and social decisions that involve science (the application of scientific information).

(5) Science, systems, and models. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student, for at least 40% of instructional time, conducts laboratory and field investigations using safe, environmentally appropriate, and ethical practices. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses scientific methods during laboratory and field investigations. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) plan and implement investigative procedures, including asking questions, formulating testable hypotheses, and selecting equipment and technology;

(C) collect data and make measurements with precision;

(D) organize, analyze, evaluate, make inferences, and predict trends from data; and

(E) communicate valid conclusions.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) evaluate the impact of research on scientific thought, society, and the environment;

(E) describe connections between physics and chemistry and future careers; and

(F) research and describe the history of physics and chemistry and contributions of scientists.

(4) Science concepts. The student knows concepts of force and motion evident in everyday life. The student is expected to:

(A) describe and calculate an object's motion in terms of position, displacement, speed, and acceleration;

(B) measure and graph distance and speed as a function of time using moving toys;

(C) investigate how an object's motion changes only when a net force is applied, including activities and equipment such as toy cars, vehicle restraints, sports activities, and classroom objects;

(D) assess the relationship between force, mass, and acceleration, noting the relationship is independent of the nature of the force, using equipment such as dynamic carts, moving toys, vehicles, and falling objects;

(E) apply the concept of conservation of momentum using action and reaction forces such as students on skateboards;

(F) describe the gravitational attraction between objects of different masses at different distances, including satellites; and

(G) examine electrical force as a universal force between any two charged objects and compare the relative strength of the electrical force and gravitational force.

(5) Science concepts. The student recognizes multiple forms of energy and knows the impact of energy transfer and energy conservation in everyday life. The student is expected to:

(A) recognize and demonstrate that objects and substances in motion have kinetic energy such as vibration of atoms, water flowing down a stream moving pebbles, and bowling balls knocking down pins;

(B) demonstrate common forms of potential energy, including gravitational, elastic, and chemical, such as a ball on an inclined plane, springs, and batteries;

(C) demonstrate that moving electric charges produce magnetic forces and moving magnets produce electric forces;

(D) investigate the law of conservation of energy;

(E) investigate and demonstrate the movement of thermal energy through solids, liquids, and gases by convection, conduction, and radiation such as in weather, living, and mechanical systems;

(F) evaluate the transfer of electrical energy in series and parallel circuits and conductive materials;

(G) explore the characteristics and behaviors of energy transferred by waves, including acoustic, seismic, light, and waves on water as they superpose on one another, bend around corners, reflect off surfaces, are absorbed by materials, and change direction when entering new materials;

(H) analyze energy conversions such as those from radiant, nuclear, and geothermal sources; fossil fuels such as coal, gas, oil; and the movement of water or wind; and

(I) critique the advantages and disadvantages of various energy sources and their impact on society and the environment.

(6) Science concepts. The student knows that relationships exist between the structure and properties of matter. The student is expected to:

(A) examine differences in physical properties of solids, liquids, and gases as explained by the arrangement and motion of atoms, ions, or molecules of the substances and the strength of the forces of attraction between those particles;

(B) relate chemical properties of substances to the arrangement of their atoms or molecules;

(C) analyze physical and chemical properties of elements and compounds such as color, density, viscosity, buoyancy, boiling point, freezing point, conductivity, and reactivity;

(D) relate the physical and chemical behavior of an element, including bonding and classification, to its placement on the Periodic Table; and

(E) relate the structure of water to its function as a solvent and investigate the properties of solutions and factors affecting gas and solid solubility, including nature of solute, temperature, pressure, pH, and concentration.

(7) Science concepts. The student knows that changes in matter affect everyday life. The student is expected to:

(A) investigate changes of state as it relates to the arrangement of particles of matter and energy transfer;

(B) recognize that chemical changes can occur when substances react to form different substances and that these interactions are largely determined by the valence electrons;

(C) demonstrate that mass is conserved when substances undergo chemical change and that the number and kind of atoms are the same in the reactants and products;

(D) analyze energy changes that accompany chemical reactions such as those occurring in heat packs, cold packs, and glow sticks and classify them as exothermic or endothermic reactions;

(E) describe types of nuclear reactions such as fission and fusion and their roles in applications such as medicine and energy production; and

(F) research and describe the environmental and economic impact of the end-products of chemical reactions such as those that may result in acid rain, degradation of water and air quality, and ozone depletion.

§112.39. Physics, Beginning with School Year 2010-2011 (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Algebra I is suggested as a prerequisite or co-requisite. This course is recommended for students in Grade 9, 10, 11, or 12.

(b) Introduction.

(1) Physics. In Physics, students conduct laboratory and field investigations, use scientific methods during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include: laws of motion; changes within physical systems and conservation of energy and momentum; forces; thermodynamics; characteristics and behavior of waves; and atomic, nuclear, and quantum physics. Students who successfully complete Physics will acquire factual knowledge within a conceptual framework, practice experimental design and interpretation, work collaboratively with colleagues, and develop critical thinking skills.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not scientifically testable.

(3) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world. Scientific methods of investigation can be experimental, descriptive, or comparative. The method chosen should be appropriate to the question being asked.

(4) Science and social ethics. Scientific decision making is a way of answering questions about the natural world. Students should be able to distinguish between scientific decision-making methods and ethical and social decisions that involve the application of scientific information.

(5) Scientific systems. A system is a collection of cycles, structures, and processes that interact. All systems have basic properties that can be described in terms of space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(c) Knowledge and skills.

(1) Scientific processes. The student conducts investigations, for at least 40% of instructional time, using safe, environmentally appropriate, and ethical practices. These investigations must involve actively obtaining and analyzing data with physical equipment, but may also involve experimentation in a simulated environment as well as field observations that extend beyond the classroom. The student is expected to:

(A) demonstrate safe practices during laboratory and field investigations; and

(B) demonstrate an understanding of the use and conservation of resources and the proper disposal or recycling of materials.

(2) Scientific processes. The student uses a systematic approach to answer scientific laboratory and field investigative questions. The student is expected to:

(A) know the definition of science and understand that it has limitations, as specified in subsection (b)(2) of this section;

(B) know that scientific hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power which have been tested over a wide variety of conditions are incorporated into theories;

(C) know that scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well-established and highly-reliable explanations, but may be subject to change as new areas of science and new technologies are developed;

(D) distinguish between scientific hypotheses and scientific theories;

(E) design and implement investigative procedures, including making observations, asking well-defined questions, formulating testable hypotheses, identifying variables, selecting appropriate equipment and technology, and evaluating numerical answers for reasonableness;

(F) demonstrate the use of course apparatus, equipment, techniques, and procedures, including multimeters (current, voltage, resistance), triple beam balances, batteries, clamps, dynamics demonstration equipment, collision apparatus, data acquisition probes, discharge tubes with power supply (H, He, Ne, Ar), hand-held visual spectrometers, hot plates, slotted and hooked lab masses, bar magnets, horseshoe magnets, plane mirrors, convex lenses, pendulum support,

power supply, ring clamps, ring stands, stopwatches, trajectory apparatus, tuning forks, carbon paper, graph paper, magnetic compasses, polarized film, prisms, protractors, resistors, friction blocks, mini lamps (bulbs) and sockets, electrostatics kits, 90-degree rod clamps, metric rulers, spring scales, knife blade switches, Celsius thermometers, meter sticks, scientific calculators, graphing technology, computers, cathode ray tubes with horseshoe magnets, ballistic carts or equivalent, resonance tubes, spools of nylon thread or string, containers of iron filings, rolls of white craft paper, copper wire, Periodic Table, electromagnetic spectrum charts, slinky springs, wave motion ropes, and laser pointers;

(G) use a wide variety of additional course apparatus, equipment, techniques, materials, and procedures as appropriate such as ripple tank with wave generator, wave motion rope, micrometer, caliper, radiation monitor, computer, ballistic pendulum, electroscope, inclined plane, optics bench, optics kit, pulley with table clamp, resonance tube, ring stand screen, four inch ring, stroboscope, graduated cylinders, and ticker timer;

(H) make measurements with accuracy and precision and record data using scientific notation and International System (SI) units;

(I) identify and quantify causes and effects of uncertainties in measured data;

(J) organize and evaluate data and make inferences from data, including the use of tables, charts, and graphs;

(K) communicate valid conclusions supported by the data through various methods such as lab reports, labeled drawings, graphic organizers, journals, summaries, oral reports, and technology-based reports; and

(L) express and manipulate relationships among physical variables quantitatively, including the use of graphs, charts, and equations.

(3) Scientific processes. The student uses critical thinking, scientific reasoning, and problem solving to make informed decisions within and outside the classroom. The student is expected to:

(A) in all fields of science, analyze, evaluate, and critique scientific explanations by using empirical evidence, logical reasoning, and experimental and observational testing, including examining all sides of scientific evidence of those scientific explanations, so as to encourage critical thinking by the student;

(B) communicate and apply scientific information extracted from various sources such as current events, news reports, published journal articles, and marketing materials;

(C) draw inferences based on data related to promotional materials for products and services;

(D) explain the impacts of the scientific contributions of a variety of historical and contemporary scientists on scientific thought and society;

(E) research and describe the connections between physics and future careers; and

(F) express and interpret relationships symbolically in accordance with accepted theories to make predictions and solve problems mathematically, including problems requiring proportional reasoning and graphical vector addition.

(4) Science concepts. The student knows and applies the laws governing motion in a variety of situations. The student is expected to:

(A) generate and interpret graphs and charts describing different types of motion, including the use of real-time technology such as motion detectors or photogates;

(B) describe and analyze motion in one dimension using equations with the concepts of distance, displacement, speed, average velocity, instantaneous velocity, and acceleration;

(C) analyze and describe accelerated motion in two dimensions using equations, including projectile and circular examples;

(D) calculate the effect of forces on objects, including the law of inertia, the relationship between force and acceleration, and the nature of force pairs between objects;

(E) develop and interpret free-body force diagrams; and

(F) identify and describe motion relative to different frames of reference.

(5) Science concepts. The student knows the nature of forces in the physical world. The student is expected to:

(A) research and describe the historical development of the concepts of gravitational, electromagnetic, weak nuclear, and strong nuclear forces;

(B) describe and calculate how the magnitude of the gravitational force between two objects depends on their masses and the distance between their centers;

(C) describe and calculate how the magnitude of the electrical force between two objects depends on their charges and the distance between them;

(D) identify examples of electric and magnetic forces in everyday life;

(E) characterize materials as conductors or insulators based on their electrical properties;

(F) design, construct, and calculate in terms of current through, potential difference across, resistance of, and power used by electric circuit elements connected in both series and parallel combinations;

(G) investigate and describe the relationship between electric and magnetic fields in applications such as generators, motors, and transformers; and

(H) describe evidence for and effects of the strong and weak nuclear forces in nature.

(6) Science concepts. The student knows that changes occur within a physical system and applies the laws of conservation of energy and momentum. The student is expected to:

(A) investigate and calculate quantities using the work-energy theorem in various situations;

(B) investigate examples of kinetic and potential energy and their transformations;

(C) calculate the mechanical energy of, power generated within, impulse applied to, and momentum of a physical system;

(D) demonstrate and apply the laws of conservation of energy and conservation of momentum in one dimension;

(E) describe how the macroscopic properties of a thermodynamic system such as temperature, specific heat, and pressure are related to the molecular level of matter, including kinetic or potential energy of atoms;

(F) contrast and give examples of different processes of thermal energy transfer, including conduction, convection, and radiation; and

(G) analyze and explain everyday examples that illustrate the laws of thermodynamics, including the law of conservation of energy and the law of entropy.

(7) Science concepts. The student knows the characteristics and behavior of waves. The student is expected to:

(A) examine and describe oscillatory motion and wave propagation in various types of media;

(B) investigate and analyze characteristics of waves, including velocity, frequency, amplitude, and wavelength, and calculate using the relationship between wavespeed, frequency, and wavelength;

(C) compare characteristics and behaviors of transverse waves, including electromagnetic waves and the electromagnetic spectrum, and characteristics and behaviors of longitudinal waves, including sound waves;

(D) investigate behaviors of waves, including reflection, refraction, diffraction, interference, resonance, and the Doppler effect;

(E) describe and predict image formation as a consequence of reflection from a plane mirror and refraction through a thin convex lens; and

(F) describe the role of wave characteristics and behaviors in medical and industrial applications.

(8) Science concepts. The student knows simple examples of atomic, nuclear, and quantum phenomena. The student is expected to:

(A) describe the photoelectric effect and the dual nature of light;

(B) compare and explain the emission spectra produced by various atoms;

(C) describe the significance of mass-energy equivalence and apply it in explanations of phenomena such as nuclear stability, fission, and fusion; and

(D) give examples of applications of atomic and nuclear phenomena such as radiation therapy, diagnostic imaging, and nuclear power and examples of applications of quantum phenomena such as digital cameras.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2009.

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Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §§185.4, 185.6, 185.13, 185.16, 185.19, 185.23, 185.26

The Texas Medical Board (Board) adopts amendments to Chapter 185, §§185.4, 185.6, 185.13, 185.16, 185.19, 185.23, and 185.26, concerning Physician Assistants, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3889) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review of Chapter 185.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the proposed rules.

The amendments to §185.4, relating to Procedural Rules for Licensure Applicants, delete expired language that grandfathered licensure applicants who applied before 2008 from having to comply with certain examination requirements, explains that applicants for relicensure who have already taken the JP exam are not required to retake the exam, and makes presentation of state licensure verification a discretionary requirement rather than mandatory for each applicant. The Board has determined that the expired language should be removed, passage of the jurisprudence examination should only be required one time, and that state licensure verification should only be required upon request.

The amendments to §185.6, relating to Annual Renewal of License, allows physician assistants to obtain six hours of CME per year by serving as an expert reviewer for the Board in relation to investigations regarding standard of care violations, and deletes language relating to a 30-day grace period after expiration of license to conform with §204.156, Texas Occupations Code.

The amendments to §185.13, relating to Notification of Intent to Practice and Supervise, provide that if a primary supervising physician of a physician assistant is not able to supervise for more than 30 days, then a new primary supervising physician must provide supervision. The Board has determined that to best protect patients and ensure that physician assistants are appropriately supervised, if a supervising physician is unable to supervise a physician assistant for more than 30 days, that a new supervising physician must be named.

The amendments to §185.16, relating to Employment Guidelines, clarifies what academic institutions a physician may supervise a physician assistant for the purpose of providing medical services in preventive medicine, disease management, health and wellness education or similar services. The Board has determined that the clarification simplifies the rules, especially as new medical schools are created.

The amendments to §185.19, relating to Administrative Penalties, reference §§187.75 - 187.82 of this title for the purpose of imposing administrative penalties on physician assistants for certain violations of the Physician Assistants (PA) Act. The Board has determined that the use of fast-track orders as set out on Chapter 187 will allow for a more efficient and fair process in relation to certain violations of the Act and Board rules.

The amendments to §185.23, relating to Third Party Reports to the Board, corrects rule citations in the Professional Liability Claims Report. The Board has determined that the correct

citations are necessary to allow licensees to meet the Board's requirements with regard to filing of Professional Liability Claims Reports.

The amendments to §185.26, relating to Voluntary Surrender of Physician Assistant License, allows for the voluntary relinquishment of a license consistent with Chapter 196 of this title. The Board has determined that the changes provide consistency with rules adopted by the Texas Medical Board that distinguish between the voluntary surrender and the voluntary relinquishment of a license.

The Board received no public written comments and no one appeared to testify at the public hearing held on July 17, 2009.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2009.

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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Commissioner of Insurance adopts amendments to §7.18, concerning the adoption by reference of the *Accounting Practices and Procedures Manual*, including new statements of statutory accounting principles (SSAPs) and new actuarial guidelines. The amended section is adopted with nonsubstantive changes to the proposed text as published in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2369).

REASONED JUSTIFICATION. The adopted amendments to §7.18 are necessary to adopt by reference the March 2008 version of the Accounting Practices and Procedures Manual (Manual) and various substantive and nonsubstantive updates to this version of the Manual issued by the National Association of Insurance Commissioners (NAIC) in calendar-year 2008, and to make several minor clarifications to the text in §7.18(a) and (b). The adopted substantive updates include new statements

of statutory accounting principles (SSAPs) and new actuarial guidelines. SSAPs provide guidance to insurers and HMOs, including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. These insurers and HMOs are referred to collectively as "carriers" in this proposal. SSAPs provide a nationwide standard method of accounting, which most carriers are required to use for statutory financial reporting guidance. Therefore, SSAPs provide for a more consistent reporting of financial information from carriers. However, SSAPs do not preempt individual state legislative or regulatory authority. SSAPs are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance of statutory accounting principles process, which involves the development and proposal of new SSAPs, holding a public hearing, providing the opportunity for public comment, and adoption by the NAIC. The Accounting Practices and Procedures Manual (Manual), published by the NAIC, is a comprehensive guide to statutory accounting principles and includes the SSAPs that have been adopted by the NAIC. SSAPs provide the source of statutory accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitation of carriers licensed in Texas, except where otherwise provided by law. Except for adopted new SSAP No. 98 and adopted new Actuarial Guideline XLIII (AG 43), the March 2008 version of the Manual and the updates to it must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. Adopted new SSAP No. 98 is effective for reporting periods ending on or after September 30, 2009, and thereafter, and shall be used to prepare all financial statements filed with the Department after September 30, 2009, beginning with the third quarter 2009 financial statements. Adopted new AG 43 is effective December 31, 2009, and shall be used to prepare all financial statements filed with the Department after January 1, 2010, beginning with the 2009 annual statements for the reporting period as of December 31, 2009.

While the Department did not receive any comments on the proposal, the Department has made minor nonsubstantive changes to the proposed text as adopted. These minor changes, however, do not materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously subject to the proposal as originally published. For purposes of clarity and consistency, the Department has made a minor change to correct punctuation in §7.18(a). As adopted, subsection (a) has been revised to replace a comma with a semicolon after the phrase "Preferred Mortality Tables." The Department also has revised §7.18(c) and (c)(1)(A) as adopted to reflect a change in the effective date of SSAP No. 98 and in the applicability of SSAP No. 98 to Department examinations and financial statements submitted to the Department. This revision is necessary to reflect the change in the effective date and applicability of SSAP No. 98 that was issued by the NAIC in April 2009. Specifically, the effective date and applicability of SSAP No. 98 have been changed from becoming effective for reporting periods beginning January 1, 2009, and thereafter, to becoming effective for reporting periods ending on or after September 30, 2009, and thereafter. The Department has also made a nonsubstantive editorial change to the published text to add the word "and" that was inadvertently omitted after the semicolon at the end of subsection (c)(1)(B)(xvii).

The following paragraphs provide a brief summary as well as an analysis of the reasons for the adopted amendments. An

adopted amendment to §7.18(a) adds the phrase "with the exceptions and additions set forth in subsections (c) and (d) of this section." This adopted amendment is necessary to clarify that the March 2008 *Accounting Practices and Procedures Manual*, including the exceptions and additions specified in §7.18(c) and (d), will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the Department. Also, an adopted amendment to §7.18(a) adds the internal reference "of this subsection" to clarify that the paragraphs (1) - (3) that are specified as preempting any contrary provisions in the Manual refer to paragraphs (1) - (3) of §7.18(a). Also, adopted amendments to §7.18(a) correct references to the titles of Department rules relating to Memorandum Regulation; Policy Reserves; and Claims Reserves. Corrections to punctuation have also been made in §7.18(a) for purposes of clarity, consistency, and readability.

Under the adopted amendments to §7.18(b), the Commissioner adopts by reference the March 2008 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d). For purposes of clarity and accuracy, an adopted amendment to §7.18(b) replaces the word "examining" with the word "analyzing." This adopted amendment is necessary to clarify that the Manual will serve as the source of accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. Also, adopted amendments to §7.18(b) provide that the March 2008 version of the Manual (i) shall be applied to examinations conducted as of January 1, 2009, and thereafter; and (ii) shall be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. These adopted amendments are necessary to clarify the purpose and application of the March 2008 version of the Manual.

Under the adopted amendments to §7.18(c), the Commissioner adopts the exceptions and additions to the Manual that are specified in §7.18(c)(1) and (2). The adopted amendments provide that these exceptions and additions (i) shall be applied to examinations conducted as of January 1, 2009 and thereafter, and (ii) also shall be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009, except as provided in adopted amendments to §7.18(c)(1)(A) concerning SSAP No. 98 and in adopted new §7.18(c)(1)(C) concerning AG 43. Under the amendments to §7.18(c)(1), the following SSAPs are adopted by reference: (i) SSAP No. 91R, which provides guidance on subsequent fair value measurement of servicing assets and servicing liabilities; (ii) SSAP No. 98, which establishes statutory accounting principles for impairment analysis and subsequent valuation of loan-backed and structured securities and amends SSAP No. 43, paragraphs 14 through 16; and (iii) SSAP No. 99, which provides statutory accounting guidance subsequent to an other-than-temporary impairment; SSAP No. 99 supersedes SSAP No. 26, paragraph 9; SSAP No. 32, paragraphs 22 - 24; and SSAP No. 43, paragraph 16; SSAP No. 99 also modifies SSAP No. 34, paragraph 3. Adopted new SSAPs Nos. 91R and 99 must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. Adopted new SSAP No. 98 is effective for reporting periods ending on or after September 30, 2009, and thereafter, and shall be used to prepare all financial statements filed with the Department after September 30, 2009, beginning with

the third quarter 2009 financial statements. Newly designated §7.18(c)(1)(A), which replaces §7.18(c)(1) in the existing rules, deletes all references to SSAP No. 97, because SSAP No. 97 is included in the March 2008 version of the Manual. Under newly designated §7.18(c)(1)(B), which replaces §7.18(c)(2) in existing rules, nonsubstantive modifications are adopted by reference to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91, and to the Preamble section of the Manual. These nonsubstantive modifications, which were issued by the NAIC in calendar-year 2008, clarify language or change disclosures, appendices, or other material referenced in SSAPs already included in the March 2008 version of the Manual. Newly designated §7.18(c)(1)(B), which replaces §7.18(c)(2) in existing rules, also deletes all references to the nonsubstantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80 because the March 2008 version of the Manual includes all of these nonsubstantive modifications. Existing §7.18(c)(2)(A) - (N) are redesignated as §7.18(c)(1)(B)(i) - (xiv) and new clauses (xv) - (xvii) are added to §7.18(c)(1)(B). New §7.18(c)(1)(C) adopts by reference three new actuarial guidelines and revisions to two existing actuarial guidelines developed by the NAIC in calendar-year 2008. Under new §7.18(c)(1)(C), the following new guidelines are adopted by reference: (i) AG 43, which provides reserve requirements for variable annuities and similar products with or without guaranteed minimum death benefits or guaranteed minimum living benefits and replaces AG 34 and AG 39, effective December 31, 2009; (ii) Actuarial Guideline XLIV (AG 44), which provides reserve requirements and guidance for group term life waiver of premium disability reserves, effective January 1, 2009; and (iii) Actuarial Guideline XLV (AG 45), which provides nonforfeiture requirements and guidance for life insurance having certain intermediate cash benefits such as return of premium benefits, effective January 1, 2009. New §7.18(c)(1)(C) also adopts by reference revisions to Actuarial Guideline XXXIV (AG 34) and Actuarial Guideline XXXIX (AG 39). Both of these guidelines address the replacement and transition from applying AG 34 and AG 39 to applying new AG 43. Existing §7.18(c)(3) - (7) is re-designated as §7.18(c)(2)(A) - (E) without changes to the existing rules.

HOW THE SECTION WILL FUNCTION. The adopted amendments to §7.18(a) clarify that the purpose of this section is to adopt the March 2008 version of the Manual and the exceptions and additions set forth in subsections (c) and (d) of this section with deference to Texas statutes and regulations. The adopted amendments to §7.18(a) also correct punctuation and references to the titles of Department rules referenced in this subsection. The adopted amendments to §7.18(b) adopt by reference the March 2008 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d). The adopted amendments to §7.18(b) also replace the word "examining" with the word "analyzing" to indicate that the Manual will serve as the source of accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. Additionally, the adopted amendments to §7.18(b) clarify the purpose and applicability of the March 2008 version of the Manual. The adopted amendments to §7.18(c)(1)(A) adopt by reference the new substantive SSAPs Nos. 91R and 99, which must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. The adopted amendments to §7.18(c)(1)(A) also adopt by reference the new substantive SSAP No. 98, which must be used to prepare

all financial statements filed with the Department for reporting periods ending on or after September 30, 2009. The adopted amendments to §7.18(c) adopt nonsubstantive modifications to the SSAPs and the Preamble section of the Manual in newly designated §7.18(c)(1)(B). Adopted amendments to §7.18(c) also adopt by reference three new actuarial guidelines (AG 43, AG 44, and AG 45) and revisions to two existing actuarial guidelines (AG 34 and AG 39) in adopted new §7.18(c)(1)(C). The adopted version of the Manual, combined with the SSAPs and actuarial guidelines adopted by reference in subsection (c)(1), include substantially all SSAPs, actuarial guidelines, and modifications to the SSAPs and actuarial guidelines adopted by the NAIC through December 31, 2008.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code Chapters 32, 36, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, 862, and §36.001. Section 401.051 and §401.056 mandate that the Department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the Department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the Commissioner, as necessary to obtain an accurate indication of the company's condition and method of transacting business, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires a health maintenance organization to file an annual report with the Commissioner, which shall include a financial statement of the health maintenance organization certified by an independent public accountant. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2008 version of the *Accounting Practices and Procedures Manual* (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and additions set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual, include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables; Actuarial Opinion and Memorandum Regulation; General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves; Minimum Reserve Standards for Individual and Group Accident and Health Insurance; 2001 CSO Mortality Table; Preferred Mortality Tables; Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness; Audited Financial Reports; and Investments, Loans, and Other Assets).

- (1) Texas statutes;
- (2) department rules;
- (3) directives, instructions, and orders of the Commissioner;
- (4) the Manual;
- (5) other NAIC handbooks, manuals, and instructions, adopted by the department; and
- (6) Generally Accepted Accounting Practices.

(b) The Commissioner adopts by reference the March 2008 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2009 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2009.

(c) The Commissioner adopts the exceptions and additions to the Manual specified in paragraphs (1) and (2) of this subsection. Except as provided in paragraph (1)(A) of this subsection concerning Statement of Statutory Accounting Principles No. 98 (SSAP No. 98) and in paragraph (1)(C) of this subsection concerning Actuarial Guideline 43, these exceptions and additions shall be applied to examinations conducted as of January 1, 2009 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2009.

(1) In addition to the statements of statutory accounting principles in the Manual, the following additions and exceptions are adopted by reference:

(A) Statement of Statutory Accounting Principles (SSAP) Nos. 91R and 99, adopted by the NAIC in calendar year 2008 and effective January 1, 2009, and SSAP No. 98, adopted by the NAIC in calendar year 2008 and effective September 30, 2009. SSAP No. 98 shall be applied to examinations conducted as of September 30, 2009, and thereafter, and also shall be used to prepare all financial statements filed with the department filed with the Department after September 30, 2009, beginning with the third quarter 2009 financial statements.

(B) Nonsubstantive modifications to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91 and to the Preamble section of the Manual made by the NAIC in calendar year 2008, as follows:

(i) Ref. No. 2008-25: FSP FAS 133-1 and FIN 45-4: Disclosures about Credit Derivatives and Certain Guarantees, Amendments of FAS 133 and FIN 45, and Clarification of the Effective Date of FAS 161;

(ii) Ref. No. 2008-22: Disclosures for Funding Agreements Issued to a Federal Home Loan Bank;

(iii) Ref. No. 2007-32: EITF 06-5: Accounting for Purchases of Life Insurance - Determining the Amount That Could be Realized in Accordance with FASB Technical Bulletin 85-4 and INT 07-05: Accounting for Deferred Compensation and Postretirement Benefit Aspects of Collateral Assignment Split-Dollar Life Insurance Arrangements;

(iv) Ref. No. 2008-05: FSP FAS 13-2: Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction;

(v) Ref. No. 2008-08: Methods Used to Determine and Report Fair Value of Securities;

(vi) Ref. No. 2007-21: SOP 97-1: Accounting by Participating Mortgage Loan Borrowers;

(vii) Ref. No. 2008-12: Clarification of Accounting for Capital Notes Held as Investments;

(viii) Ref. No. 2002-20: Valuation and Reporting of Residential Interests;

(ix) Ref. No. 2007-34: Use of Audited Tax Basis Financial Statements;

(x) Ref. No. 2007-30: Remove Reference to Health Reserves Guidance Manual;

(xi) Ref. No. 2008-06: Clarification of SSAP No. 63 Regarding Intercompany Pooling Arrangements;

(xii) Ref. No. 2008-03: Discounting of Loss Adjustment Expense Reserves;

(xiii) Ref. No. 2007-36: Goodwill in a Merged Subsidiary;

(xiv) Ref. No. 2008-17: FSP FAS 142-3, Determination of the Useful Life of Intangible Assets;

(xv) Ref. No. 2008-14: Measurement of Sufficient Collateralization for Securities Lending Transactions;

(xvi) Ref. No. 2005-02: Amendment to the Permitted Practices Notice Requirement; and

(xvii) Ref. No. 2008-19: FAS 162, The Hierarchy of Generally Accepted Accounting Principles; and

(C) Actuarial Guidelines 43, 44, and 45, and revised Actuarial Guidelines 34 and 39, issued by the NAIC in calendar year 2008. Actuarial Guideline 43 shall be applied to examinations conducted as of January 1, 2010 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2010.

(2) In addition, the following exceptions and additions are adopted:

(A) Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 96, except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall be settled within 90 days of the period for which the services are being billed; otherwise such balances shall be nonadmitted.

(B) Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(C) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(D) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(E) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than \$6 million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice. Such filing shall be made with the Senior Associate Commissioner, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2009.

TRD-200902926

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: August 6, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER A. CONSERVATION ASSISTANCE

31 TAC §517.10

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §517.10, which extends the deadline when soil and water conservation districts (districts) must have all claims for Conservation Assistance Funds (Matching Funds) in the state office. The amended rule is adopted without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3913) and will not be republished.

Specifically, this adopted amendment changes the deadline from August 1st to August 31st to provide districts more consistency with end-of-year reporting requirements and more time to earn/raise matching contributions.

No comments were received regarding adoption of the amended rule.

The amended rule is adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2009.

TRD-200902957

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: August 9, 2009

Proposal publication date: June 12, 2009

For further information, please call: (254) 773-2250 x252



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §§19.201, 19.210, 19.214

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.201, 19.210, and 19.214 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2501).

The amendments are adopted by HHSC, on behalf of DADS, as part of a project adopting a new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation and home and community support services agencies, which is published elsewhere in this issue of the *Texas Register*. DADS is adopting these amendments to the licensing rules for nursing facilities to reference new Chapter 99.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902907

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2009
Proposal publication date: April 17, 2009
For further information, please call: (512) 438-3734

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §90.11, §90.17

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §90.11 and §90.17, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions, without changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2509).

The amendments are adopted by HHSC, on behalf of DADS, as part of a project adopting a new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation (ICFs/MR) and home and community support services agencies, which is published elsewhere in this issue of the *Texas Register*. DADS is adopting these amendments to the licensing rules for (ICFs/MR) to reference new Chapter 99.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate ICFs/MR.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902908
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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Proposal publication date: April 17, 2009
For further information, please call: (512) 438-3734

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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.11

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §92.11, in Chapter 92, Licensing Standards for Assisted Living Facilities, without changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2511).

The amendments are adopted by HHSC, on behalf of DADS, as part of a project adopting a new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation and home and community support services agencies, which is published elsewhere in this issue of the *Texas Register*. DADS is adopting an amendment to the licensing rules for assisted living facilities to reference new Chapter 99.

DADS received no comments regarding adoption of the amendments.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§97.2, 97.11, 97.21, 97.241, 97.244, and the repeal of §97.223 in Chapter 97, Licensing Standards for Home and Community Support Services Agencies, without

changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2513).

The amendments are adopted by HHSC, on behalf of DADS, as part of a project adopting a new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation and home and community support services agencies (HCSSAs), which is published elsewhere in this issue of the *Texas Register*. DADS is adopting these amendments to the licensing rules for HCSSAs to reference new Chapter 99 and a repeal of a section in the HCSSA rules governing criminal offenses that may constitute a bar to licensure, because those offenses are listed in Chapter 99.

DADS received no comments regarding adoption of the amendments and repeal.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate HCSSAs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902910

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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Proposal publication date: April 17, 2009

For further information, please call: (512) 438-3734



SUBCHAPTER B. CRITERIA AND ELIGIBILITY, APPLICATION PROCEDURES, AND ISSUANCE OF A LICENSE

40 TAC §97.11, §97.21

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate HCSSAs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200902911

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 2. CONDITIONS OF A LICENSE

40 TAC §97.223

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate HCSSAs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200902912

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



DIVISION 3. AGENCY ADMINISTRATION

40 TAC §97.241, §97.244

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate HCSSAs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §98.11, §98.19

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §98.11 and §98.19, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements, without changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2522).

The amendments are adopted by HHSC, on behalf of DADS, as part of a project adopting a new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation and home and community support services agencies, which is published elsewhere in this issue of the *Texas Register*. DADS is adopting these amendments to the licensing rules for adult day care facilities to reference new Chapter 99.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902914

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2009

Proposal publication date: April 17, 2009

For further information, please call: (512) 438-3734



CHAPTER 99. CRIMINAL CONVICTIONS BARRING FACILITY LICENSURE

40 TAC §99.1, §99.2

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §99.1 and §99.2 in Chapter 99, Criminal Convictions Barring Facility Licensure, without changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2524).

The new sections are adopted by HHSC, on behalf of DADS, to establish new Chapter 99 governing criminal convictions barring licensure for nursing facilities, assisted living facilities, adult day care facilities, intermediate care facilities for persons with mental retardation (ICFs/MR), and home and community support services agencies (HCSSAs). As part of the adoption for the Chapter 99 rules, DADS is adopting a repeal and amendments to the licensing rules for all other facility types to reference new Chapter 99. The amendments to the licensing rules are published elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate ICFs/MR; Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities; Texas Human Resources Code, Chapter 103, which authorize DADS to license and regulate adult day care facilities; and Texas Health and Safety Code, Chapter 142, which authorizes DADS to license and regulate HCSSAs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2009.

TRD-200902915

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2009
Proposal publication date: April 17, 2009
For further information, please call: (512) 438-3734



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Medical Board

Title 22, Part 9

The Texas Medical Board (Board) adopts the review of Chapter 185, Physician Assistants, §§185.1 - 185.26, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3985).

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts amendments to §§185.4, 185.6, 185.13, 185.16, 185.19, 185.23, and 185.26.

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 185, Physician Assistants.

TRD-200902943

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Filed: July 20, 2009



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Job Corps Diploma Program Accountability Procedures Manual
August 2008

Background

In 2005, the 79th Legislature enacted statute that allows Job Corps to establish a diploma program to offer a secondary school curriculum, a diploma program, and a General Educational Development (GED) program. The requirements of the Job Corps diploma program are found under Chapter 18 of the Texas Education Code (TEC). Under Chapter 18 of the TEC, the Texas Education Agency (TEA) is required to implement appropriate accountability procedures consistent with Chapter 39 of the TEC, to be used in assigning an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts.

The goals of a Job Corps diploma program are to:

1. serve at-risk students who have not been successful in a traditional school setting;
2. increase student success rates in obtaining and maintaining employment; and
3. decrease future societal costs by offering a diploma program to students who would benefit from Job Corps academic and vocational programs.

Job Corps Diploma Program Student Eligibility Criteria

1. Any person enrolled in the Job Corps Training Program and who does not have a diploma is eligible to enroll in the Job Corps diploma program. Any person enrolled in the diploma program is eligible for programs or services under Chapter 18 of the TEC.
2. A person's eligibility for programs and services under Chapter 18 of the TEC does not exclude the person from being eligible for an education program or service under any other chapter of the TEC.

Requirements of a Job Corps Diploma Program

The diploma program shall:

1. provide a course of instruction that includes the required curriculum under Subchapter A, Chapter 28, of the TEC;
2. require that students enrolled in the diploma program satisfy the appropriate Texas Assessment of Knowledge and Skills assessments required for graduation before receiving a diploma; and
3. comply with requirements established in rule to determine compliance with Chapter 18 of the TEC, as determined by the commissioner of education.

Student Records

The Job Corps diploma program must ensure that education records include information used to document the data it submits to TEA, including leaver, dropout, and completion data, that are used in the diploma program accountability procedures and reports. The education records of the diploma program must be made available to the TEA in the conduct of authorized monitoring, investigation, or audit activities.

Purpose of Job Corps Diploma Accountability Procedures

The purpose of the Job Corps accountability procedures is to ensure the implementation of accountability procedures consistent with Chapter 39 of the TEC, where appropriate, to assign an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts under Section 39.072 of the TEC.

In addition to other factors determined by the commissioner of education under Section 39.051 of the TEC, the diploma program accountability procedures consider:

1. student performance on appropriate grade levels and subject areas by the Texas Assessment of Knowledge and Skills (TAKS);
2. dropout rate aggregated for the grade levels served by the diploma program; and
3. completion rate (students who leave the diploma program and receive GED certificates are not counted as completers in the Job Corps diploma program completion rate).

Description of the Job Corps Diploma Program

The state's accountability system is required to rate all districts and campuses serving students in Grades 1-12. Where appropriate, the accountability procedures for the Job Corps diploma programs are consistent with the state's accountability system. However, the accountability procedures for the Job Corps diploma programs necessitate separate accountability procedures that meet the characteristics of the students served in the diploma program and to appropriately evaluate the performance of the diploma program.

The diploma program is designed to expedite the progress of enrolled students toward performing at grade level and completing credits and passing the assessments necessary to attain a diploma. The diploma program accomplishes this goal by providing a variety of instructional services, including accelerated instruction, to meet the needs of students.

Job Corps Diploma Program School Year

The Job Corps diploma program operates on a year round school calendar: **September 1 - August 31**.

An eligible student may enroll and withdraw at any time during the diploma program school year.

Job Corps Diploma Program Grade and Age Levels Served

The Job Corps diploma program serves Grades 9-12. Students who are eligible to enroll in the Job Corps training program are also eligible to enroll in the Job Corps diploma program. The eligibility age of enrollment in the Job Corps training program is age 16 through 24.

Job Corps Diploma Program Accountability Requirements

1. The diploma program shall comply with applicable state and federal laws and regulations, including Section 504 of Rehabilitative Act of 1973 (§504) and the Individuals with Disabilities Education Act (IDEA).
2. The diploma program must have appropriately certified instructional staff for each subject matter taught in the diploma program.
3. The diploma program must demonstrate required improvement when accountability standards are not met.

Evaluation of Job Corps Diploma Programs

The Job Corps diploma program accountability procedures are used to rate performance of the diploma program. Ratings are based on aggregate performance of the diploma program. Performance results of all students in the diploma program are included in the diploma program's annual performance rating and used in determining the diploma program's rating. Diploma programs receiving ratings under these accountability procedures are evaluated on the following indicators:

1. performance on the exit-level TAKS only
2. diploma program completion rate (Grades 9-12)
3. diploma program dropout rate (aggregate of all grade levels served in the diploma program)

Each of these performance indicators is described in the following section.

Job Corps Diploma Program Accountability Performance Indicators and Procedures

I. TAKS Indicator

Indicator Definition.

1. Total number of exit-level TAKS tests administered to diploma program students any time during the school year (September 1, 2007 - August 31, 2008).
2. Total number of exit-level TAKS tests on which the students met the passing standard.

$\frac{\text{Tests passed}}{\text{Tests administered}} = \% \text{ Met Standard}$

Subjects. The exit-level TAKS tests include the following subjects:

English Language Arts
Mathematics
Social Studies
Science

Test Administrations. The exit-level TAKS must be administered to Job Corps diploma program students on the same date and in accordance with the same testing calendar established for the statewide student assessment program. A student's exit-level TAKS answer document must indicate a grade level. The indicator includes results for first-time testers and retesters from all TAKS administrations for the year (September 1 - August 31). The indicator is based on tests rather than students. If a student has results from multiple administrations for the same subject, all are included in the indicator.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the Public Education Information Management System (PEIMS) Data Standards.

Minimum Size Criteria. Performance is always evaluated at the All Students level. Student groups are evaluated if there are *at least 10 tests for the subject area tested*.

Data Source. Test results are provided to the Job Corps diploma program by the test contractor. TEA will calculate the rates.

II. Job Corps Diploma Program Completion Rate Indicator

Indicator Definition. Completion of the Job Corps diploma program is defined as meeting all of the requirements of the diploma program, including passing all portions of the exit-level TAKS. Students participating in an approved adult education GED program and receiving a GED certificate are **not included** in the Job Corps diploma program Completion Rate.

Data used to calculate the Completion Rate:

1. Total number of students who completed the Job Corps diploma program at any time between September 1, 2007 - August 31, 2008 (2007-2008 school year).
2. Total number of students who did not complete the Job Corps diploma program, between September 1, 2007 - August 31, 2008, but who are enrolled in the diploma program on the first school day in September 2008 (the first day of school for the 2008-2009 school year), are counted as "still enrolled" in the diploma program.
3. Total number of students who left the diploma program without completing the program between September 1, 2007 - August 31, 2008 (2007-2008 school year). These students will be reported with the appropriate "leaver" code listed in the Job Corps Diploma Program Leaver Code table.

Job Corps Diploma Program Completion Rate Calculation

$$\frac{\text{diploma recipients + still enrolled}}{\text{students enrolled in diploma program}} = \text{diploma program completion rate (\%)} \\ \text{(diploma recipients + still enrolled + leavers + dropouts)}$$

Important: Students who enroll in the Job Corps diploma program for the first time on the first school day in September 2008 are not included in the completion rate for 2007-2008. New enrollees on the first school day in September 2008 will be included in the completion rate for the 2008-2009 school year when the rate is calculated in 2010.

Leavers. The Job Corps diploma program must document the withdrawal of students and maintain on file the appropriate paperwork associated with student withdrawals. The Job Corps diploma program is required to maintain all documentation related to all leaver reason codes at the diploma program site. Merits of leaver documentation are assessed at the time the documentation is requested by the TEA for program monitoring purposes, including verifying data integrity. Determination of the acceptability of documentation is made by the TEA staff reviewing the documentation.

Leaver Documentation. In determining the merits of reported leaver codes, the TEA may review written documentation. When the Job Corps diploma program obtains oral withdrawal information, the information must be verified by telephone and noted in writing by an authorized representative of the Job Corps diploma program.

Withdrawal information should include:

- the date of withdrawal, signature(s) of the adult student or the person responsible for the student, such as the parent or legal guardian
- the date and signature of the diploma program principal or designee such as a staff member who serves as the school's registrar or attendance clerk
- the leaver code and statement of reason for withdrawal
- the student's destination
- documentation of the telephone call to verify the withdrawal information that was obtained orally
- documentation of enrollment in another public or private school (i.e., request for records)
- documentation of the date on which the student's enrollment and access was activated for the distance education school (i.e., e-mail notification of log-in access)

The Job Corps Diploma Program Leaver Codes are provided below and in the Appendix of this document.

Leaver Code	Explanation of Reason
01 – Student completed Job Corps diploma requirements	Use for students who meet all Job Corps diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2007- August 31, 2008).
02 – Student withdrew from Job Corps Training Program to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate or certify that the student is enrolled under a planned degree or certificate program for at least 3 semester hours or one class.
03 – Student is issued a GED certificate on or before - August 31 of the same school year	Student received a GED certificate on which the issue date is on or before August 31, 2008.
04 – Student withdrew from Job Corps Training Program to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a public school in Texas.
05 – Student withdrew from Job Corps Training Program to enroll in another Job Corps diploma program in Texas	Student withdrew from this Job Corps diploma and training program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.
06 – Student withdrew from Job Corps Training Program to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a private school in Texas.
07 – Student withdrew from Job Corps diploma program to enroll in the Job Corps accredited distance education school	Student withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education. Documentation must show activation of the student's enrollment.
08 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.
09 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Completion Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the Job Corps diploma program at any time during the school year (September 1 – August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the Job Corps diploma program is not evaluated on Completion Rate.

Data Source. Completion data are reported for the prior school year. For example, completion data submitted in December 2008 will be for the September 1, 2007 - August 31, 2008 school year. The Job Corps diploma program must submit data to the TEA by **the first Monday in December 2008**. TEA will calculate the rates.

III. Job Corps Diploma Program Dropout Rate Indicator

The Job Corps Diploma Program Dropout Rate indicator is based on the total number of students participating (enrolled) in the diploma program during the Job Corps diploma program school year: September 1 - August 31. The dropout rate is an aggregate of Grades 9-12 dropouts as a percent of all students enrolled in the diploma program in Grades 9-12 from September 1 - August 31.

Indicator Definition. A student is counted as a dropout if the student was enrolled in the Job Corps diploma program at any time during the school year (September 1, 2007 - August 31, 2008) and is not enrolled in the diploma program on the first school day in September 2008.

Exceptions: A student is **not** counted as a dropout if the student:

- received diploma by August 31 of the same school year;
- died;
- received a GED certificate by August 31 of the same school year;
- withdrew to enroll in college or a technical institution;
- withdrew to enroll in a Texas public or private school providing secondary education or another Job Corps Diploma Program in Texas; or
- withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education.

Diploma Program Dropout Rate Calculation:

$$\frac{\text{dropouts (leaver code 09)}}{\text{students enrolled in diploma program} \text{ (diploma recipients + still enrolled + leavers + dropouts)}} = \text{diploma program dropout rate (\%)}$$

Examples of Dropout and Non-Dropout Definitions:

1. A student who withdraws from the diploma program on November 15, 2007, and re-enrolls in the diploma program on May 15, 2008, does not receive a diploma from the diploma program by August 31, 2008, and is enrolled on first school day in September 2008 is not a dropout for 2007-2008.
2. A student who withdraws from the diploma program on June 15, 2008, and enrolls in the GED program on July 15, 2008, and receives a GED certificate on August 1, 2008, then re-enrolls in the diploma program on August 15, 2008, and is enrolled on the first school day in September 2008 is not a dropout for 2007-2008.
3. A student who withdraws from the diploma program on May 15, 2008, and re-enrolls in the diploma program on June 15, 2008, and does not complete the diploma program by August 31, 2008, and is not enrolled on the first school day in September 2008 is reported as a dropout for 2007-2008.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Dropout Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the diploma program at any time during the school year (September 1 - August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the diploma program is not evaluated on Dropout Rate.

Data Source. Dropouts are reported for the prior school year. For example, dropout data submitted in December 2007 will be for the September 1, 2007 - August 31, 2008 school year. The Job Corps diploma program must submit data to the TEA by the **first Monday in December 2008**. TEA will calculate the rates.

How Students Are Counted for the Job Corps Diploma Program Accountability Performance Indicators

Student Enrollment Status and the "One-day" Snapshot Date

For accountability purposes, the Job Corps diploma program has a "one-day" snapshot date. The "one-day" snapshot date is the **first school day in September**. On the first school day in September 2008, the diploma program must assign an enrollment status and grade level classification (9, 10, 11, or 12) to each student who was enrolled in the diploma program at any time during the 2007-2008 school year.

The enrollment statuses (and leaver codes) are:

1. diploma recipient: the student was awarded a Texas high school diploma on or before August 31, 2008 (leaver code 01);
2. still enrolled: the student was still enrolled in the Job Corps diploma program on the first school day in September 2008 (no leaver code);
3. leaver: the student
 - a. passed the GED test and received a GED certificate on or before August 31, 2008 (leaver code 03);
 - b. withdrew from the Job Corps diploma program to enroll in another educational setting (leaver code 02, 04, 05, 06, or 07);
 - c. died (leaver code 08);
4. dropout: the student left the Job Corps diploma program for any reason not categorized above (leaver code 09).

Each student enrolled in the Job Corps diploma program in the 2007-2008 school year should fit into **one** of the above four categories.

Counting Leavers and Students Who Re-enroll. Any student enrolled in the diploma program in the 2007-2008 school year is assigned only one leaver code, regardless of the number of times or reasons for withdrawing and re-enrolling in the diploma program. The student's leaver code must reflect the student's last leaver status as of the first school day in September.

Counting Diploma Recipients. **August 31st** is the date by which students must receive their diplomas to be counted as diploma recipients of the Job Corps diploma program.

Job Corps Diploma Program Data Collection and Reporting

By the **first Monday in December** of each school year, the diploma program is required to submit to TEA certain data for use in determining the annual performance rating of the diploma program.

The "**one-day**" snapshot date used to determine the data is the **first school day in September**.

Data Collection Form

The Job Corps diploma program is required to submit and correct data in the format determined by TEA. The data collection form is included in the Appendix of this document. The collection of data is reviewed annually and revised, as necessary, to assign an annual performance rating to the diploma program. The Job Corps diploma program must retain auditable individual student data and documentation for activities such as monitoring or investigations.

Requests for Extensions to Submission Deadline

Extenuating circumstances may occur that preclude the diploma program from submitting its data to TEA on time. These extenuating circumstances are limited to circumstances that are not within the control of the diploma program including natural disasters or catastrophes and for which there are no practical options to providing the data to TEA. Extensions for these circumstances are considered and granted on a case-by-case basis. If the diploma program anticipates that it will not be able to meet the due date, a written statement signed by the director of the Job Corps diploma program (or designee) must be sent to the TEA no later than 30 calendar days from the due date and include the following information.

- the reasons for the delay or anticipated delay in submitting the data;
- the plan of action for resolving the existing problems;
- a request for an extension; and
- a commitment to a specific date for submitting the data to TEA. Extensions greater than 30 days after the TEA due date will not be approved unless it is substantiated that the circumstances are extreme and for which no alternative is available.

Requests for extension are to be mailed or faxed to:

Texas Education Agency
Student Services and GED – Job Corps Program
1701 N. Congress Ave.
Austin, TX 78701-1494
FAX (512) 463-9428

The TEA division responsible for school district services will notify the Job Corps diploma program director (or designee) whether the extension was or was not granted. If the data submission is delayed and communication is not received from the diploma program, the diploma program campus name will be forwarded to TEA General Counsel for further action.

Correcting Data Submission

The diploma program may find it necessary to correct data submitted. All diploma program resubmissions must be submitted to the TEA no later than the **last school day in January**. If extenuating circumstances arise and the diploma program is not able to correct its data within this timeline, the same procedures used to request an extension to data submission (above) must be followed.

Release of Diploma Program Accountability Preview Data Tables and Ratings

By **August 1 of each year**, the Job Corps diploma program **accountability rating will be released**.

The Job Corps diploma program will not have access to their data tables or ratings electronically, such as through a TEA Secure Environment (TEASE). TEA will provide accountability data and rating reports.

Job Corps Diploma Program Performance Standards

This section prescribes the standards and criteria for each performance indicator used to evaluate the diploma program. TEA staff will annually recommend to the commissioner of education the appropriate standards for each performance indicator listed below to meet the characteristic of students served in the diploma program.

1. Exit-level TAKS Passing Standard
2. Diploma Program Completion Rate Standard
3. Diploma Program Dropout Rate Standard

For students receiving special education services, the standard for meeting Admission, Review, and Dismissal (ARD) expectations will continue to be set locally, consistent with state law. Students receiving services under an individualized education plan (IEP) and taking TAKS will be included in the TAKS indicator.

The diploma program must demonstrate required improvement when accountability standards are not met.

The standards for each performance indicator will be established for 2008-2009, based on data collected for 2007-2008.

Job Corps Diploma Program Accountability Standards for Rating Issued in August 2009

Indicator	Rating	
	2006-2007 Report data	2007-2008
Exit-level TAKS	Acceptable 45%	Acceptable 45%
Diploma Program Completion Rate	Acceptable -75%	Acceptable -75%
$\frac{\text{Diploma recipients + still enrolled}}{\text{Students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{completion rate (\%)}$		
Diploma Program Dropout Rate	Acceptable -10%	Acceptable -10%
$\frac{\text{dropouts (leaver code 09)}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{dropout rate (\%)}$ <p>Students dropping out in 2006-2007 are reported in 2007-2008 Students dropping out in 2007-2008 are reported in 2008-2009 <i>"Dropout" is defined in the Job Corps Diploma Program Accountability Procedures.</i></p>		

Job Corps Diploma Program Accountability Ratings

The diploma program rated under the Job Corps diploma program accountability procedures is assigned one of the three ratings listed below:

1. *Acceptable*
2. *Unacceptable*
3. *Not Evaluated*

Acceptable or Unacceptable	If there are no exit-level TAKS results, the diploma program will not be rated. If there are exit-level TAKS results, the program will be rated if the program meets the minimum size criteria.
Not Evaluated	Assigned to diploma programs with no exit-level TAKS results or to programs that do not meet the minimum size criteria.

Special Analysis for Small Numbers

The TEA conducts special analysis when very small amounts of data are used in determining the performance rating of the Job Corps diploma program. For special analysis, the Job Corps Diploma Program accountability procedures use comparative data from the prior year.

Job Corps Diploma Program Appeal Process

Preview Data Tables

The diploma program will receive a preview of its data table as determined by the TEA and described in the Job Corps Diploma Program Accountability Procedures Manual. After receipt of the data table, the diploma program may appeal the rating to the commissioner of education or the commissioner's designee. For the Job Corps diploma program, the Associate Commissioner of School District Services is designated to review the appeal and recommend the final rating to the commissioner of education.

Appeal Ratings

1. The diploma program may appeal the data or calculation error attributable to the TEA or the test contractor for the student assessment program.
2. Problems due to the diploma program's errors in data submission or on TAKS answer sheets are considered on a case-by-case basis.
3. The statutes permit consideration of data reporting quality in evaluating the merits of an appeal. Poor data quality is not a valid reason to appeal the accountability rating. Only appeals that would result in a changed rating will be considered.

How to Appeal a Rating

The diploma program appealing an accountability rating must submit to the commissioner of education a letter that includes the following:

1. A statement that the letter is an appeal of the [YEAR] Job Corps diploma program accountability rating;
2. The name and ID number of the diploma program for which the appeal is being submitted.
3. The specific indicator(s) appealed.
4. The problem, including details of the data affected and what caused the problem.
5. If applicable, the reason(s) why the cause of the problem is attributable to the TEA or the test contractor for the student assessment program.
6. The reason(s) why the change would result in a different rating, including calculations that support the different outcome.
7. A statement that all information included in the appeal is true and correct to the diploma program's best knowledge and belief.
8. The signature of the official representative of the diploma program.

Additional Appeal Procedures

- The Job Corps diploma program is provided one opportunity to appeal each indicator.
- When student-level information is in question, supporting information must be provided for review, including the student's name and identification number.
- The diploma program must ensure all relevant information is included in the appeal. The TEA will not contact the diploma program for additional materials.
- The appeal letter must be postmarked by the date determined by the TEA. Appeals postmarked after this date will not be considered.
- The appeal letter must be addressed to Commissioner of Education and mailed to Job Corps Diploma Program Accountability Procedures; Student Services and GED – Job Corps Program; Texas Education Agency; 1701 N. Congress Ave.; Austin, TX; 78701-1494.

How an Appeal Is Processed and Decision Issued

1. The details of the appeal are entered into a database for tracking purposes.

2. TEA staff evaluates the request using TEA data sources to validate the information to the extent possible and all relevant data.
3. The Division of School District Services prepares and forwards a recommendation to the commissioner of education.
4. The commissioner of education makes the final decision.
5. The diploma program is notified in writing of the commissioner's decision and the reason for the decision.
6. The decision of the commissioner is final and is not subject to further review or appeal.
7. If an appeal is granted, the data upon which the appeal was based will not be modified. TEA reports that reflect accountability data, must report the data as they are submitted to the TEA. Accountability data are subject to review by the Office of the State Auditor.
8. The commissioner of education will respond in writing to each appeal. The letter from the commissioner serves as notification of the official rating for the diploma program.

Final Ratings

After the resolution of all appeals, the TEA will assign a final rating to the diploma program.

On-site Investigations

Under Section 39.074 of the TEC, the commissioner may (1) direct the TEA to conduct on-site investigations at any time to answer any questions concerning a program, including special education, required by federal law or for which the program receives federal funds; and (2) raise or lower the performance rating as a result of the investigation. The manner in which the TEA will conduct the on-site investigation is described under Section 39.076 of the TEC and 19 TAC §97.1033. In conducting the on-site investigation, data other than the data reported through the data collection form may be reviewed by the TEA to determine compliance with applicable federal and state laws and rules. The diploma program is required to maintain at its program facility, the education records and data required in meeting TEA reporting requirements. The Job Corps diploma program must retain auditable individual student data and documentation for activities such as monitoring and investigations.

Required Improvement

Required Improvement compares prior-year performance to current-year performance. In order to conduct this comparison, All Students or any student group must meet the minimum size requirement for the prior year.

Improvement Standards for the diploma program will be determined for 2009-2010 based on data submitted for 2007-2008 and 2008-2009.

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must demonstrate required improvement within two school years.

Performance Indicator	Standard of Improvement Required
TAKS Measure	a standard of <u>_(TBD)_</u> % within two years
Diploma Program Completion Rate	a standard of <u>_(TBD)_</u> % within two years
Diploma Program Dropout Rate	a decline in the rate to be at <u>_(TBD)_</u> % within two years

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must meet the standards of improvement on all deficient performance indicators. If the improvement standard is met for every deficient measure, then the diploma program is assigned an *Acceptable* rating.

Sanctions

Based on the nature of and severity of the problem(s) identified, the commissioner of education has the authority to take action under Chapter 39 of the TEC, including closure of the diploma program.

Sanctions may be applied as a result of:

- problems identified through the application of system safeguards;
- unacceptable performance for two consecutive years; or
- the findings of an on-site investigation authorized under Section 39.074 of the TEC.

Appendix

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TEXAS EDUCATION AGENCY

Job Corps Diploma Program

2008-2009 Data Collection Form for 2007-2008 Data Year

Please TYPE:

Job Corps Diploma Program Name

Job Corps Diploma Program Number

Job Corps Diploma Program Director's Name

Telephone Number

The following signature affirms that the undersigned has submitted all required data and has taken measures to verify the accuracy and the authenticity of the data being submitted for the Job Corps Diploma Program.

Job Corps Diploma Program Director's Signature

Date

Authority for Data Collection: Texas Education Code, §18.006 - Job Corps Diploma Program.

Planned Use of the Data: For 2008-2009 Diploma Program Accountability Ratings for the Job Corps Diploma Program issued by the Commissioner in compliance with Chapter 18 of the Texas Education Code.

Instructions: Complete **ONE** report for the Job Corps diploma program using **2007-2008 school year data**. Complete this form regardless of the diploma program enrollment size. Do not leave any boxes blank and do not write "not applicable." If there is no number to report in a box, enter "0" (zero) in that box. Do not attach any additional documents to this report. **See additional instructions below for each item.**

Submission Timeline: This completed and signed form must be **postmarked by the first Monday in December 2008**. Mail form to:


**Texas Education Agency
Student Services and GED – Job Corps Program
1701 N. Congress Avenue
Austin, Texas 78701-1494**

Fax and email submissions are not accepted. Maintain a copy of this report and any supporting documentation for your records. Texas Education Agency (TEA) will send the Job Corps Diploma Program Director a written confirmation of receipt.

Questions: If there are any questions regarding the data submission, please call Student Services and GED – Job Corps Program at (512) 475-3541. For submission corrections, please refer to the Correcting Data Submission section of the **Job Corps Diploma Program Accountability Procedures Manual**.

Please note that information submitted to TEA is subject to release in accordance with Chapter 552 of the Texas Government Code (Texas Public Information Act), and includes the Family Educational Rights and Privacy Act (FERPA).

GROUP	All Students	African American	Hispanic	White
IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
1. Total Students who were enrolled in the Job Corps diploma program at any time between September 1, 2007, and August 31, 2008. If a student withdrew from the diploma program and later re-entered it, count the student only once.				
2. Diploma Recipients: Students in #1 who were awarded a Job Corps diploma at any time between September 1, 2007, and August 31, 2008 (Leaver Code 01). See Leaver Code Table on page 2.				
Completing the diploma program means meeting all diploma program requirements and passing all portions of the exit-level TAKS.				

 **continues**

GROUP	All Students	African American	Hispanic	White
IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
3. Still Enrolled: Students in #1 who did not complete the diploma program (including did not pass the exit-level TAKS) and who are still enrolled in the diploma program on the first school day in September 2008 (no Leaver Code). "Still enrolled" is defined as a student who was enrolled during the 2007-2008 school year (regardless of whether the student withdrew and re-enrolled) and is enrolled on the first school day in September 2008.				
4. Leavers: Students in #1 who did not complete the diploma program, were not enrolled in the diploma program on the first school day in September 2008, and were withdrawn under any of the following <i>Leaver Codes: 02, 03, 04, 05, 06, 07, or 08</i> . A student with one of these seven (7) leaver codes is not counted as a dropout for the diploma program accountability system. Any student enrolled in the diploma program in the 2007-2008 school year is assigned only one leaver code on the "one-day" snapshot date: first school day in September 2008. Regardless of the number of times or reasons the student withdrew and re-enrolled in the diploma program, assign the student one leaver code and count the student only once.				
5. Dropouts: Students in #1 who did not complete the diploma program, were not enrolled on the first school day in September 2008, <u>and</u> were withdrawn under Leaver Code 09.				
6. Total Students who participated in Job Corps Training Program at any time between September 1, 2007, and August 31, 2008, and who entered the training program without a high school diploma, and who did not participate in the diploma program. If a student withdrew from the training program and later re-entered it, count the student only once.				
Leaver Code	Explanation of Reason			
01 – Student completed Job Corps diploma requirements	Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2007 - August 31, 2008).			
02 – Student withdrew from Job Corps Training Program to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate or certify that the student is taking classes under a planned degree or certificate program for at least 3 semester hours or one class.			
03 – Student is issued a GED certificate on or before August 31 of the same school year	Student received a GED certificate on which the issue date is on or before August 31, 2008.			
04 – Student withdrew from Job Corps Training Program to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a public school in Texas.			
05 – Student withdrew from Job Corps Training Program to enroll in another Job Corps diploma program in Texas	Student withdrew from the Job Corps diploma program and training program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.			
06 – Student withdrew from Job Corps Training Program to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a private school in Texas.			
07 – Student withdrew from Job Corps diploma program to enroll in the Job Corps distance education school.	Student withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education. Documentation must show activation of the student's enrollment.			
08 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.			
09 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.			

Figure 1: 22 TAC Chapter 361--Preamble

Type of Fee	Current Fee	Proposed Fee	Increase in Fee
License (Initial and Annual Renewal)			
Master Plumber	\$198	\$230	\$32
Journeyman Plumber	27	40	13
Tradesman Plumber-Limited	27	36	9
Registration (Initial and Annual Renewal)			
Drain Cleaner	12	18	6
Drain Cleaner-Restricted	12	18	6
Residential Utility Installer	12	18	6
Plumber's Apprentice	12	18	6
Examination:			
Master Plumber	155	175	20
Journeyman Plumber	27	40	13
Tradesman Plumber-Limited	27	36	9

Figure 2: 22 TAC Chapter 361--Preamble

Type of License or Registration	Amount of Increase	Amount Over Five Years
Master Plumber	\$32	\$160
Journeyman Plumber	13	65
Tradesman Plumber-Limited	9	45
Drain Cleaner	6	30
Drain Cleaner-Restricted	6	30
Residential Utility Installer	6	30
Plumber's Apprentice	6	30

Figure: 25 TAC §289.201(b)(105)(B)

$$\frac{175 \text{ (grams contained U - 235)}}{350} + \frac{50 \text{ (grams U - 233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

Department of State Health Services
1100 West 49th Street
P.O. Box 149347
Austin, Texas 78714-9347

NOTICE TO EMPLOYEES

TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

YOUR EMPLOYER'S RESPONSIBILITY

Your employer is required to-

1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, licenses, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE RULES

1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit as stated in the rules, license, or certificate of registration. The basic limits for exposure to employees are stated in 25 Texas Administrative Code (TAC)

§289.202(f), (k), (l), and (m) (relating to Standards for Protection Against Radiation from Radioactive Materials) and 25 TAC §289.231(m) (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). These subsections specify limits on exposure to radiation and exposure to concentrations of radioactive material in air and water.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.202 or §289.231:

- (a) your employer must furnish to you, upon your written request, an annual written report of your exposure to radiation; and
- (b) your employer must give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

INSPECTIONS

All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers who believe that there is a violation of the Texas Radiation Control Act, the rules issues thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must state the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

POSTING REQUIREMENT

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities licensed or registered, in accordance with 25 TAC §289.252 (relating to Licensing of Radioactive Material) and 25 TAC §289.226 (relating to Registration of Radiation Machine Use and Services), to permit employees to observe a copy on the way to or from their place of employment.

Applicable sections of 25 TAC Chapter 289 may be reviewed online, at www.dshs.state.tx.us/radiation/rules.shtml. Our license and/or certificate of registration and any associated documents, our operating procedures, and any "Notice of Violation" or order issued by the agency may be reviewed at the following location:

Figure: 25 TAC §289.251(l)(1)

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration Ci/ml*	Liquid and Solid Concentration μ Ci/ml**
Antimony (51)	Sb-122		3×10^{-4}
	Sb-124		2×10^{-4}
	Sb-125		1×10^{-3}
Argon (18)	Ar-37	1×10^{-3}	
	Ar-41	1×10^{-7}	
Arsenic (33)	As-73		5×10^{-3}
	As-74		5×10^{-4}
	As-76		2×10^{-4}
	As-77		8×10^{-4}
Barium (56)	Ba-131		2×10^{-3}
	Ba-140		3×10^{-4}
Beryllium (4)	Be-7		2×10^{-2}
Bismuth (83)	Bi-206		4×10^{-4}
Bromine (35)	Br-82	4×10^{-7}	3×10^{-3}
Cadmium (48)	Cd-109		2×10^{-3}
	Cd-115m		3×10^{-4}
	Cd-115		3×10^{-4}
Calcium (20)	Ca-45		9×10^{-5}
	Ca-47		5×10^{-4}
Carbon (6)	C-14	1×10^{-6}	8×10^{-3}
Cerium (58)	Ce-141		9×10^{-4}
	Ce-143		4×10^{-4}
	Ce-144		1×10^{-4}
Cesium (55)	Cs-131		2×10^{-2}
	Cs-134m		6×10^{-2}
	Cs-134		9×10^{-5}
Chlorine (17)	Cl-138	9×10^{-7}	4×10^{-3}
Chromium (24)	Cr-51		2×10^{-2}
Cobalt (27)	Co-57		5×10^{-3}
	Co-58		1×10^{-3}
	Co-60		5×10^{-4}
Copper (29)	Cu-64		3×10^{-3}

* Values are given in Column I only for those materials normally used in gases.

** μ Ci/gm for solids

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration $\mu\text{Ci/ml}^*$	Liquid and Solid Concentration $\mu\text{Ci/ml}^{**}$
Dysprosium (66)	Dy-165		4×10^{-3}
	Dy-166		4×10^{-4}
Erbium (68)	Er-169		9×10^{-4}
	Er-171		1×10^{-3}
Europium (63)	Eu-152		
	(T/2=9.2 h)		6×10^{-4}
	Eu-155		2×10^{-3}
Fluorine (9)	F-18	2×10^{-6}	8×10^{-3}
Gadolinium (64)	Gd-153		2×10^{-3}
	Gd-159		8×10^{-4}
Gallium (31)	Ga-72		4×10^{-4}
Germanium (32)	Ge-71		2×10^{-2}
Gold (79)	Au-196		2×10^{-3}
	Au-198		5×10^{-4}
	Au-199		2×10^{-3}
Hafnium (72)	Hf-181		7×10^{-4}
Hydrogen (1)	H-3	5×10^{-6}	3×10^{-2}
Indium (49)	In-113m		1×10^{-2}
	In-114m		2×10^{-4}
Iodine (53)	I-126	3×10^{-9}	2×10^{-5}
	I-131	3×10^{-9}	2×10^{-5}
	I-132	8×10^{-8}	6×10^{-4}
	I-133	1×10^{-8}	7×10^{-5}
	I-134	2×10^{-7}	1×10^{-3}
Iridium (77)	Ir-190		2×10^{-3}
	Ir-192		4×10^{-4}
	Ir-194		3×10^{-4}
Iron (26)	Fe-55		8×10^{-3}
	Fe-59		6×10^{-4}
Krypton (36)	Kr-85m	1×10^{-6}	
	Kr-85	3×10^{-6}	
Lanthanum (57)	La-140		2×10^{-4}
Lead (82)	Pb-203		4×10^{-3}

* Values are given in Column I only for those materials normally used in gases.

** $\mu\text{Ci/gm}$ for solids

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration $\mu\text{Ci/ml}^*$	Liquid and Solid Concentration $\mu\text{Ci/ml}^{**}$
Lutetium (71)	Lu-177		1×10^{-3}
Manganese (25)	Mn-52		3×10^{-4}
	Mn-54		1×10^{-3}
	Mn-56		1×10^{-3}
Mercury (80)	Hg-197m		2×10^{-3}
	Hg-197		3×10^{-3}
	Hg-203		2×10^{-4}
Molybdenum (42)	Mo-99		2×10^{-3}
Neodymium (60)	Nd-147		6×10^{-4}
	Nd-149		3×10^{-3}
Nickel (28)	Ni-65		1×10^{-3}
Niobium			
(Columbium) (41)	Nb-95		1×10^{-3}
	Nb-97		9×10^{-3}
Osmium (76)	Os-185		7×10^{-4}
	Os-191m		3×10^{-2}
	Os-191		2×10^{-3}
	Os-193		6×10^{-4}
Palladium (46)	Pd-103		3×10^{-3}
	Pd-109		9×10^{-4}
Phosphorus (15)	P-32		2×10^{-4}
Platinum (78)	Pt-191		1×10^{-3}
	Pt-193m		1×10^{-2}
	Pt-197m		1×10^{-2}
	Pt-197		1×10^{-3}
Polonium (84)	Po-210		7×10^{-6}
Potassium (19)	K-42		3×10^{-3}
Praseodymium	Pr-142		3×10^{-4}
	Pr-143		5×10^{-4}
Promethium (61)	Pm-147		2×10^{-3}
	Pm-149		4×10^{-4}
Radium (88)	Ra-226		1×10^{-7}
	Ra-228		3×10^{-7}

* Values are given in Column I only for those materials normally used in gases.

** $\mu\text{Ci/gm}$ for solids

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration $\mu\text{Ci/ml}^*$	Liquid and Solid Concentration $\mu\text{Ci/ml}^{**}$
Rhenium (75)	Re-183		6×10^{-3}
	Re-186		9×10^{-4}
	Re-188		6×10^{-4}
Rhodium (45)	Rh-103m		1×10^{-1}
	Rh-105		1×10^{-3}
Rubidium (37)	Rb-86		7×10^{-4}
Ruthenium (44)	Ru-97		4×10^{-3}
	Ru-103		8×10^{-4}
	Ru-105		1×10^{-3}
	Ru-106		1×10^{-4}
Samarium (62)	Sm-153		8×10^{-4}
Scandium (21)	Sc-46		4×10^{-4}
	Sc-47		9×10^{-4}
	Sc-48		3×10^{-4}
Selenium (34)	Se-75		3×10^{-3}
Silicon (14)	Si-131		9×10^{-3}
Silver (47)	Ag-105		1×10^{-3}
	Ag-110m		3×10^{-4}
	Ag-111		4×10^{-4}
Sodium (11)	Na-24		2×10^{-3}
Strontium (38)	Sr-85		1×10^{-3}
	Sr-89		1×10^{-4}
	Sr-91		7×10^{-4}
	Sr-92		7×10^{-4}
Sulfur (16)	S-35	9×10^{-8}	6×10^{-4}
Tantalum (73)	Ta-182		4×10^{-4}
Technetium (43)	Tc-96m		1×10^{-1}
	Tc-96		1×10^{-3}

* Values are given in Column I only for those materials normally used in gases.

** $\mu\text{Ci/gm}$ for solids

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration $\mu\text{Ci/ml}^*$	Liquid and Solid Concentration $\mu\text{Ci/ml}^{**}$
Tellurium (52)	Te-125m		2×10^{-3}
	Te-127m		6×10^{-4}
	Te-127		3×10^{-3}
	Te-129m		3×10^{-4}
	Te-131m		6×10^{-4}
	Te-132		3×10^{-4}
Terbium (65)	Tb-160		4×10^{-4}
Thallium (81)	Tl-200		4×10^{-3}
	Tl-201		3×10^{-3}
	Tl-202		1×10^{-3}
	Tl-204		1×10^{-3}
Thulium (69)	Tm-170		5×10^{-4}
	Tm-171		5×10^{-3}
Tin (50)	Sn-113		9×10^{-4}
	Sn-125		2×10^{-4}
Tungsten (Wolfram) (74)	W-181		4×10^{-3}
	W-187		7×10^{-4}
Vanadium (23)	V-48		3×10^{-4}
Xenon (54)	Xe-131m	4×10^{-6}	
	Xe-133	3×10^{-6}	
	Xe-135	1×10^{-6}	
Ytterbium (70)	Yb-175		1×10^{-3}
Yttrium (39)	Y-90		2×10^{-4}
	Y-91m		3×10^{-2}
	Y-91		3×10^{-4}
	Y-92		6×10^{-4}
	Y-93		3×10^{-4}
Zinc (30)	Zn-65		1×10^{-3}
	Zn-69m		7×10^{-4}
	Zn-69		2×10^{-2}

* Values are given in Column I only for those materials normally used in gases.

** $\mu\text{Ci/gm}$ for solids

		Column I	Column II
Element (atomic number)	Isotope	Gas Concentration μCi/ml*	Liquid and Solid Concentration μCi/ml**
Zirconium (40)	Zr-95		6×10^{-4}
	Zr-97		2×10^{-4}
Beta and/or gamma emitting radioactive material not listed above with half-life less than 3 years		1×10^{-10}	1×10^{-6}

NOTE 1: Many radioisotopes disintegrate into isotopes that are also radioactive. In expressing the concentrations in this paragraph, the activity stated is that of the parent isotope and takes into account the daughters.

NOTE 2: For purposes of subsection (d) of this section where a combination of isotopes is involved, the limit for the combination should be derived as follows: Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in this paragraph for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (for example, unity).

EXAMPLE:

$$\frac{\text{Concentration of Isotope A in Product}}{\text{Exempt Concentration of Isotope A}} + \frac{\text{Concentration of Isotope B in Product}}{\text{Exempt Concentration of Isotope B}} \leq 1$$

- * Values are given in Column I only for those materials normally used in gases.
 ** μCi/gm for solids

Figure: 25 TAC §289.251(l)(2)

<u>Radioactive Material</u>	<u>Microcuries</u>
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Beryllium-7 (Be-7)	100
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100
Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100

<u>Radioactive Material</u>	<u>Microcuries</u>
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au-195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100

<u>Radioactive Material</u>	<u>Microcuries</u>
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Radon-222 (Rn-222)	100
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100

<u>Radioactive Material</u>	<u>Microcuries</u>
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-87m (Sr-87m)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulphur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium-131m (Te-131m)	10

<u>Radioactive Material</u>	<u>Microcuries</u>
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material	0.1

Figure: 25 TAC §289.252(jj)(2)

RADIONUCLIDES	Limit	Unsealed Sources			Sealed Sources
		10 ³	10 ⁴	10 ⁵	
Pr-141 Gd-152 Bi-209m U-232 Pu-240 Cm-245 Cf-252	0.01 µCi	0.01 mCi	0.1 mCi	1.0 mCi	100 Ci
Ce-142 Dy-154 Po-208 U-233 Pu-241 Cm-246 Es-254					
Nd-144 Dy-156 Po-209 U-234 Pu-242 Cm-247					
Nd-145 Tb-159 Po-210 U-235 Pu-244 Cm-248					
Sm-146 Ho-165 Ra-226 U-236 Am-241 Bk-247					
Sm-147 Hf-174 Ac-227 Np-235 Am-242m Bk-249					
Sm-148 W-180 Th-228 Np-237 Am-243 Cf-248					
Gd-148 Pt-190 Th-229 Pu-236 Cm-242 Cf-249					
Gd-150 Pb-210 Th-230 Pu-238 Cm-243 Cf-250					
Gd-151 Bi-209 Pa-231 Pu-239 Cm-244 Cf-251					
and any alpha-emitting radionuclide not listed above or mixtures of unknown alpha emitters of unknown composition.					
Be-10 Fe-60 Rh-102 Te-123 Sm-145 Lu-175 Ir-199m	0.1 µCi	0.1 mCi	1.0 mCi	10 mCi	1.0 kCi
Al-26 Zn-70 Pd-107 Te-130 Nd-150 Lu-176 Pt-192					
Si-32 Ge-68 Ag-108m I-129 Eu-150 Lu-177m Pt-198					
Ar-39 Ge-76 Cd-113m La-137 Tb-157 Hf-172 Hg-194					
K-40 Kr-81 Cd-116 La-138 Tb-158 Hf-182 Pb-202					
Ar-42 Sr-90 Sn-121m Ce-139 Dy-159 Ta-179 Pb-205					
Ca-48 Zr-96 Sn-123 Pm-143 Ho-166m Re-184m Bi-208					
Ti-44 Mo-100 Sn-124 Pm-144 Lu-173 Re-187 Ra-228					
V-49 Tc-98 Sn-126 Pm-145 Lu-174 Re-189 Np-236					
V-50 Rh-101 Te-121m Pm-146 Lu-174m Os-194 Bk-248					
and any other alpha-emitting radionuclides not listed above or mixtures of beta emitters of unknown composition.					
Na-22 Ru-106 Cs-134 Eu-152 Bi-210	1.0 µCi	1.0 mCi	10 mCi	100 mCi	10 kCi
Co-60 Ag-110m Ce-144 Eu-154					
Cl-36 Ni-63 Rb-87 Cd-109 Ba-133 Gd-153 Tm-171	10 µCi	10 mCi	100 mCi	1.0 Ci	100 kCi
Ca-45 Zn-65 Zr-93 In-115 Ba-135 Eu-155 W-181					
Mn-54 Se-75 Nb-93m Sb-125 Cs-137 Tm-170 Tl-204					
C-14, Co-57 Kr-85 Tc-99 Ir-194 U (natural) U-238	100 µCi	100 mCi	1.0 Ci	10 Ci	1.0 MCi
Fe-55 Ni-59 Tc-97 Pt-193, Th-232 Th (natural)					
H-3	1.0 mCi	1 Ci	10 Ci	100 Ci	10 MCi

Figure: 25 TAC §289.252(jj)(9)(D)

<u>Radionuclide</u>	<u>Quantity of Concern¹</u> <u>(TBq)</u>	<u>Quantity of Concern² (Ci)</u>
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above ³	See footnote below ⁴	

¹ The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

² The primary values used for compliance are TBq. The curie (Ci) values are rounded to 2 significant figures for informational purposes only.

³ Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered co-located.

⁴ If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n , $A(i,n)$, to the quantity of concern for radionuclide n , $Q(n)$, listed for that radionuclide equals or exceeds 1. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... >1

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Bend Bays and Estuaries Program

Request for Proposals

Project Title: Educational Fieldtrips to Area Facilities

Project Number: 0907

Proposal Due Date: August 30, 2009

Notification of Award: September 15, 2009

The Coastal Bend Bays and Estuaries Program (CBBEP) is soliciting proposals to further the implementation of the Coastal Bend Bays Plan. Please submit proposals in agreement with the CBBEP Request for Proposals - Instructions.

Background:

Classroom teachers today face the almost overwhelming challenge of helping students progress through the required subject material. Many of the students that are being exposed to scientific concepts for the first time have never really spent much time outdoors or in dedicated environmental education facilities. There is a need to bring classroom concepts alive in the proper setting through educational fieldtrips. Teachers struggle daily to teach environmental concepts to children with "Nature Deficit Disorder." As environmental educators we need to support the "No Child Left Inside" initiative to the best of our ability.

The CBBEP is requesting proposals from local organizations to conduct environmental education learning experiences for students and their teachers. The programs must present a quality environmental learning experience. Funding between \$5000 - \$10,000 is intended for use providing the education fieldtrips, including costs of associated educational materials and any necessary and reasonable costs associated with transporting teachers and students from the school to the destination. The fieldtrip program must expand on current environmental programs already in existence in your facility.

Goal:

The goal of the CBBEP is to plant seeds of appreciation and a passion for a new generation of naturalists, biologists, and nature lovers to protect and preserve the Coastal Bend through educating school children about preserving our environment and protecting our animal and plant life.

Proposals submitted in response to this request must specifically adhere to the following:

- * Must be a well established environmental education provider
- * Educational Opportunity must expand on existing program
- * Must partner with the CBBEP in the vision to educate children about the environment
- * Must target primary-middle school age children within our 12 county outreach area (list number of students expected per trip)
- * Facilities must be located within the CBBEP 12 county outreach area
- * Must use funding in the 2009 - 2010 school year

Proposal instructions can be obtained from the CBBEP website: www.cbbep.org or by contacting Lari Jo W. Johnston, Environmental Educator, at (361) 885-6207 or via email at ljjohnston@cbbep.org

Proposals that are incomplete, unclear, or fail to comply with the requirements of the CBBEP's Request for Proposals Instructions may be rejected.

Visit our website - www.cbbep.org

TRD-200902981

Ray Allen

Executive Director

Coastal Bend Bays and Estuaries Program

Filed: July 21, 2009

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - May 2009

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period May 2009, as required by Tax Code, §202.058, is \$37.81 per barrel for the three-month period beginning on February 1, 2009, and ending April 30, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period May 2009, as required by Tax Code, §201.059, is \$3.22 per mcf for the three-month period beginning on February 1, 2009, and ending April 30, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2009, from a qualified Low-Producing Gas Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200902945

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 20, 2009

Certification of the Average Taxable Price of Gas and Oil - June 2009

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period June 2009, as required by Tax Code, §202.058, is \$43.18 per barrel for the three-month

period beginning on March 1, 2009, and ending May 31, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period June 2009, as required by Tax Code, §201.059, is \$3.09 per mcf for the three-month period beginning on March 1, 2009, and ending May 31, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2009, from a qualified Low-Producing Gas Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200902946

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 20, 2009



Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces Amendment No. 1 contract awards as follows:

The notice of Request for Qualifications was published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3459) (RFQ #183b). The Notice of Awards was published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8413).

The contractors provide contract tax examination services to the Comptroller as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Government Code.

Contracts that were amended were awarded to the following persons/firms:

Jacqueline A. Muhammad d/b/a Alexander Consulting, 3825 Wingtail Way, Pearland, Texas 77584, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

Nolton Consulting LLC, 200 Creekside Park Drive, Johns Creek, Georgia 3002, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

Mark Steven Swinney d/b/a The Davis Swinney Group, P.O. Box 317, Rio Hondo, Texas 78583, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

Willie L. Sullivan, Jr., 4530 Brookren Court, Pearland, Texas 77584, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

Tarrant & Bulgherini, PC, 2101 Old Alvin Road, Pearland, Texas 77581-3511, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew.

Joe Wamp, 6606 Mapleshade Lane, #21F, Dallas, Texas 75252, is extended by Amendment No. 1. The extended term of the contract continues through August 31, 2010, with one (1) year option to renew. The total amount of each contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each contract. The original term of the contracts was September 1, 2008 through August 31, 2009. Amendment No. 1, that is the subject of this notice, extends the term of the contracts through August 31, 2010.

TRD-200903014

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 22, 2009



Notice of Contract Amendment

Notice of Contract Amendment: The Comptroller of Public Accounts (Comptroller) announces Amendment No. 2 contract awards.

The Comptroller's Request for Qualifications was published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2756) (RFQ 178c). The Notice of Awards was published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7111).

The contractors provide contract tax examination services to the Comptroller as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Government Code.

The Comptroller announces that thirty-two (32) contracts were amended beginning on June 19, 2009 as follows:

The contract previously awarded to Blythe Corporation, 3002 Sugar Maple, Friendswood, TX 77546, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Terra Hillman, 2174 E. Michael Square, Lake Charles, LA 70611, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Dibrell P. Dobbs d/b/a State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, TX 76016, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Marina Roy Buenaventura, 4042 Cheena Drive, Houston, TX 77025-4702, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, TX 75077, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Stephanie (Clark) Jackson, 2700 Blanchette Street, Beaumont, TX 77701, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Art Koenings, Jr., 15712 Spillman Ranch Loop, Austin, TX 78738, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously is awarded to Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, TX 77083, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Brenda Maldonado, 2095 Savannah Trace, Beaumont, TX 77706, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, TX 76087, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Paul D. Underwood, 4791 CR 2221, Odem, TX 78370, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Max Dwain Martino PC, 373 1/2 West 19th Street, Suite C-2, Houston, TX 77008, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Homer Max Wiesen, 1009 Panhandle Street, Denton, TX 76201-2841, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Marsha Johnson, Inc., 6205 Westwood Drive, Amarillo, TX 79124-1212, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Stephen T. Broad, 1218 Gordon Blvd., San Angelo, TX 76905, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Jodie Moore, 2707 Bent Creek Drive, Pearland, TX 77584, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to David Kasen, 634 10th Street #1F, Brooklyn, NY 11215, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Deborah A. Jones, 3818 Trappers Forest Drive, Houston, TX 77088-7442, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Jennifer Wilmoth, 1142 Stratborough Lane, Fort Collins, CO 80525, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Philip E. Tan, 8815 Crazy Horse Trail, Houston, TX 77064, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to The JSO Group, Inc., 11610 Aucuba Lane, Houston, TX 77095, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Cherise D. Collins, 17011 Driver Lane, Sugar Land, TX 77498, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to D. Smith Consulting, 418 Sonora Drive, Garland, TX 75043, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Vernice Seriale, Jr., 11612 Corss Spring Drive, Pearland, TX 77584, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Robert J. Whorton, 23006 Red River Drive, Katy, TX 77450, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Clayborn Accounting and Financial Services, Inc., 100 IH-45 North, Suite 108, Box 118, Conroe, TX 77301, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Stites Tax Consulting Group, GP, LLC d/b/a Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, TX 78681, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Louis A. Sanchez, 2314 Woodwind Drive, Richmond, TX 77469, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Davis & Davis Professional Services Firm LLC, 12300 Ford Road, Suite 290, Dallas, TX 75234, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Felicia S. Ward d/b/a Morgan, Spencer & Company, 1301 Stapleton Street, Flower Mound, TX 75028, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Mary A. Wickland, 920 Howell Street, Beaumont, TX 77706, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew.

The contract previously awarded to Stacie Sims, CPA, 205 Rolling Hill Drive, La Grange, TX 78945, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2010, with no options to renew. The total amount of each contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each contract. The original term of the contracts was September 1, 2007 through August 31, 2008. The contracts were subsequently amended by Amendment No. 1 to extend the respective terms from September 1, 2008 through August 31, 2009. Amendment No. 2 that is subject of this notice extends the term of the contract through August 31, 2010.

TRD-200903013

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 22, 2009

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Notice of Withdrawal of Request for Proposals

The Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company), announces the withdrawal of its Request for Proposals (RFP 183c) for global real estate investment management services for the Trust Company.

Issuance Date: The Request for Proposals was published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2714).

TRD-200903015

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 22, 2009



Public Notice of Court Costs and Fees

Texas Government Code, §51.607, requires the comptroller to publish a list of all court costs and fees imposed or changed during the most recent regular session of the Legislature. This section also provides that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until the January following the effective date of the law, unless the bill makes a specific exception. If the bill takes effect before August 1 or after January 1, then the court cost or fee takes effect upon the effective date of the bill.

The listing of court costs and fees to be identified and published as required by Government Code, §51.607 are as follows:

House Bill 144

Filing Fee for Civil Cases in Bexar County

Effective June 19, 2009. House Bill 144, relates to an additional temporary filing fee for civil cases filed in Bexar County.

The bill amends Government Code, §51.706, by adding an additional temporary filing fee not to exceed \$15 in certain civil cases to fund the improvement of court facilities, if authorized by the county commissioners court. Applies only to district courts, statutory probate courts, and county courts at law in Bexar County.

The bill amends Government Code, §101.06111, by adding an additional filing fee not to exceed \$15 in certain civil cases to fund the improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, §101.08111, by adding an additional filing fee not to exceed \$15 in certain civil cases to fund the improvement of court facilities, if authorized by the county commissioners court.

The bill amends Government Code, §101.10111, by adding an additional filing fee not to exceed \$15 in certain civil cases to fund the improvement of court facilities, if authorized by the county commissioners court.

House Bill 666

Drug Court Programs

Effective January 1, 2010. House Bill 666, relates to drug court program fund. The bill amends Code of Criminal Procedure, Article 102.0178(a), to raise the costs a person has to pay to \$60 from \$50, in addition to other costs on conviction.

The bill amends Government Code, §102.021, adding costs attendant to convictions under Penal Code, Chapter 49 (intoxication and Alco-

holic Beverage Offense), and Health and Safety Code, Chapter 481 (Texas Controlled Substance Act), to help fund drug court programs established under Health and Safety Code, Chapter 469.

House Bill 1960

Peace Officers Employed by County Payment for Appearance

Effective June 19, 2009. House Bill 1960 amends Local Government Code, Chapter 157 by adding §157.906, that a county must pay a peace officer employed by the county for an appearance as a witness in a criminal suite, a civil suit, or an administrative proceeding in which the county or other political subdivision or government agency is a party in interest if the appearance: (1) is required; (2) is made on time off; and (3) is made by the peace officer in the capacity of a peace officer. Payment is at the peace officer's regular rate of pay. Payment may be taxed as court costs in civil suits.

House Bill 3389

Civil Justice Fee

Effective January 1, 2010. House Bill 3389, relates to a defendant convicted of a moving violation. The bill amends Code of Criminal Procedure, Chapter 102, by adding Article 102.022, establishing a new \$.10 fee for convictions of moving violations in a justice court, county court, county court at law, or municipal court to be remitted to the comptroller and deposited in the Civil Justice Repository fund. The funds are to be used only by the Commission on Law Enforcement Officer Standards and Education.

The bill amends Government Code, Chapter 102, adding §102.061(7), establishing an additional \$0.10 as a civil justice fee on conviction of a defendant in statutory county court.

The bill amends Government Code, Chapter 102, adding §102.081(7), establishing an additional \$0.10 as a civil justice fee on conviction of a defendant in county court.

The bill amends Government Code, Chapter 102, adding §102.101(9), establishing an additional \$0.10 as a civil justice fee on conviction of a defendant in justice court.

The bill amends Government Code, Chapter 102, adding §102.121(7), establishing an additional \$0.10 as a civil justice fee on a conviction of a defendant in municipal court.

House Bill 3637

County and District Technology Fee

Effective January 1, 2010. House Bill 3637 relates to filing fees in civil actions.

The bill amends Code of Criminal Procedure, Chapter 102, adding Article 102.0169, to create a new \$4.00 county and district court technology fee as a court cost for a defendant convicted in county court, statutory county court, or district court. The fee will apply in all county court, statutory county court or district court convictions. The fee must be deposited into the county treasury in a fund to be known as the county and district court technology fund and administered by or under the direction of the commissioners court of the county.

The bill amends Local Government Code, §133.153(a), to increase the filing fee for statutory and constitutional courts from \$5.00 to \$10 and the filing fee for justice of the peace courts from \$2.00 to \$6.00.

The bill amends Government Code, Chapter 51, adding §51.708, to create an additional filing fee not to exceed \$10 in each civil case filed in the court to be used for court record preservation in the county and retained locally in a court record preservation account in the county

treasury. The funds in the account may be used only to digitize court records and preserve the records from natural disasters.

The bill amends Government Code, Chapter 101, adding §101.06117, to create an additional filing fee not to exceed \$10 in certain civil cases filed in district court to fund the preservation of court records.

The bill amends Government Code, Chapter 101, adding §101.08115, to establishing an additional filing fee not to exceed \$10 in certain civil cases filed in statutory county courts cases to fund the preservation of court records.

The bill amends Local Government Code, §101.0814, adding conforming language to increase the filing fee for filing any civil action or proceeding from \$5.00 to \$10 to fund civil legal services for the indigent; and increases the additional filing fee from \$37 to \$42 to be used for court-related purposes for the support of the judiciary.

The bill amends Local Government Code, §101.1013, to increase the filing fee for any civil action filed in a statutory probate court from \$5.00 to \$10 to fund civil legal services for indigent.

The bill amends Government Code, Chapter 101, adding §101.12124, establishing an additional filing fee in county courts not to exceed \$10 in certain civil cases to fund the preservation of court records.

The bill amends Government Code, §101.1214(10) and §101.1214(11), to increase the filing fee for county courts from \$5.00 to \$10 to fund civil legal services for indigent; and increases the additional filing fee from \$37 to \$42 to be used for court-related purposes for the support of the judiciary.

The bill amends Government Code, §101.141(b), to increase the filing fee for justice courts from \$2.00 to \$6.00 court to fund civil legal services for indigent.

The bill amends Government Code, Chapter 102, §102.041, to create a new \$4.00 county and district court technology fee as a court cost for a defendant convicted in district court; and increases the juvenile delinquency prevention and graffiti eradication fee from \$5.00 to \$50.

The bill amends Government Code, Chapter 102, §102.061, to create a new \$4.00 county and district court technology fee as a court cost for a defendant convicted in statutory county court; and increases the juvenile delinquency prevention and graffiti eradication fee from \$5.00 to \$50.

The bill amends Government Code, Chapter 102, §102.081, to create a new \$4.00 county and district court technology fee as a court cost for a defendant convicted in county court; and increases the juvenile delinquency prevention and graffiti eradication fee from \$5.00 to \$50.

House Bill 4529

Official Court Reporter Serving the Texas-Mexico Border

Effective June 19, 2009. The bills amends Government Code, §51.601, by adding subsection (a-1) that requires the clerk of each court that has an official court reporter and that serves a county located on the Texas-Mexico border that contains a municipality with a population of 500,000 or more, to collect a court reporter service fee of \$30 as a court cost in each civil case filed with the court.

The bill amends Government Code, §103.0211, adding conforming language to require a court reporter service fee of \$30 in specified counties.

House Bill 4718

Ector County Courts at Law

Effective January 1, 2010. House Bill 4718 amends Government Code, §25.0702, by adding subsection (c) to provide that the fees assessed in

a case in which a county court a law has concurrent civil jurisdiction with the district court are the same as the fees that would be assessed in the district court for that case.

House Bill 4833

Veterans Court Program

Effective January 1, 2010. House Bill 4833 amends Health and Safety Code, adding Chapter 617, to create a Veterans Court Program. The bill allows a participant in the program to pay a reasonable program fee not to exceed \$1,000; and a testing, counseling, and treatment fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program. Fees collected may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director and based on the participant's ability to pay; and used only for purposes specific to the program.

Senate Bill 61

Securing a Child Passenger in a Motor Vehicle Fee

Effective June 1, 2010. Senate Bill 61 amends Transportation Code, §545.412, by amending subsections (a) and (b) and adding subsection (b-1) that adds an additional \$0.15 as a court cost on conviction for failing to secure a child passenger in a motor vehicle. The fee is to be remitted to the comptroller for deposit in a separate account in the general revenue fund that may be appropriated only to the Texas Department of Transportation and used to purchase child passenger safety seat systems and distribute them to low-income families. §The bill amends Government Code, Chapter 102, adding §102.104, which is conforming language to create an additional \$0.15 on court costs on convictions in justice courts. §The bill amends Government Code, Chapter 102, adding §102.122, which is conforming language to create an additional \$0.15 on court costs on convictions in municipal court.

Senate Bill 82

Family Violence Center Fee

Effective January 1, 2010. Senate Bill 82 amends Government Code, §103.021, adding conforming language to: require a defendant to pay a fee for requesting a driving record from the Department of Public Safety in an amount equal to the sum of the fee established by Transportation Code, §521.048 (Certified Information), and the TexasOnline fee, rather than current \$10 fee; require a defendant to pay a fee for a teen court program (Code of Criminal Procedure, Art. 45.052) of \$20, if the court ordering the fee is located in the Texas-Louisiana border region, otherwise the fee is not to exceed \$10; require a defendant to pay an additional \$20 fee to cover costs of required duties of teen courts (Code of Criminal Procedures, Art. 45.052) if the court ordering the fee is located in the Texas-Louisiana border region, otherwise the fee is \$10 if court is not located in the Texas-Louisiana border region; require a defendant to pay fees for a pretrial intervention program including a supervision fee (Code of Criminal Procedure, Art. 102.012(a)) of \$60 a month plus expenses, rather than not to exceed \$60 and a district attorney, criminal district attorney or county attorney administrative fee (Code of Criminal Procedure, Art. 102.0121) not to exceed \$500.

Senate Bill 409

Fees Charged by Justice of the Peace for Certain Criminal Case Documents

Effective May 27, 2009. Senate Bill 409 amends Local Government Code, §118.124, by adding subsection (5) to provide that a justice is not entitled to a fee for the first copy of a document in a criminal case issued to a criminal defendant, an attorney representing the defendant, or a prosecuting attorney.

Senate Bill 658

Sixth Court of Appeals District Appellate Judicial System Support Fee

Effective January 1, 2010. Senate Bill 658 amends Government Code, Chapter 22, by adding §22.2071, to create an appellate judicial system for the Sixth Court of Appeals District. To fund the system, the county commissioners court in each county in the Sixth District is required to set a court fee of \$5.00 for each civil suit filed in county court, county court at law, probate court or district court in the county. The court costs fee does not apply to a suit filed by the county or to a suit for delinquent taxes.

The bill amends Government Code, Chapter 101, by adding §101.06113, to require the clerk of a district court in the Sixth Court of Appeals District to collect an appellate judicial system fee of \$5.00 under Government Code, §22.2071.

The bill amends Government Code, Chapter 101, by adding §101.08112, to require the clerk of a statutory county court in the Sixth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2071.

The bill amends Government Code, Chapter 101, by adding §101.10112, to require the clerk of a statutory probate court in the Sixth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2071.

The bill amends Government Code, Chapter 101, by adding §101.12121, to require the clerk of a county court in the Sixth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2071.

Senate Bill 659

Twelfth Court of Appeals District Appellate Judicial System Support Fee

Effective January 1, 2010. Senate Bill 659 amends Government Code, Chapter 22, by adding §22.2131, to create an appellate judicial system for the Twelfth Court of Appeals District. To fund the system, the county commissioners court in each county in the Twelfth District is required to set a court fee of \$5.00 for each civil suit filed in county court, county court at law, probate court or district court in the county. The court costs fee does not apply to a suit filed by the county or to a suit for delinquent taxes.

The bill amends Government Code, Chapter 101, by adding §101.06114, to require the clerk of a district court in the Twelfth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2131.

The bill amends Government Code, Chapter 101, by adding §101.08113, to require the clerk of a statutory county court in Twelfth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2131.

The bill amends Government Code, Chapter 101, by adding §101.10113, to require the clerk of a probate court in the Twelfth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2131.

The bill amends Government Code, Chapter 101, by adding §101.12122, to require the clerk of a county court in the Twelfth Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2131.

Senate Bill 727

DNA Data base System

Effective January 1, 2010. The bill amends Code of Criminal Procedure, Article 102.020, by adding subsections (a)(3), and (j) to require a person to pay \$34 on placement of the person on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Code of Criminal Procedure, Article 42.12, §11(j), and the court may waive a court cost under this article if the court determines that the defendant is indigent and unable to pay the cost.

The bill amends Family Code, Chapter 54, adding §54.0462, to require a juvenile court in certain cases to order the child, parent or other persons responsible for the child's support to pay to the court as a cost of court a \$50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission, and a \$34 fee if the disposition of the case does not include a commitment and the child is required to submit a DNA sample. The fee may be waived if the court determines that the child, parent or other persons responsible for the child's support is unable to pay the fee.

The bill amends Code of Criminal Procedure, Chapter 102, Article 102.021, by adding conforming language to require a person to pay court costs of \$34 for DNA testing for certain felonies under Code of Criminal Procedure, Art. 102.020(a)(3), and \$50 for convictions under Penal Code, Chapter 49 and Health and Safety Code, Chapter 481 to fund drug court programs under Health and Safety Code, Chapter 481.

The bill amends Family Code, §103.0212, adding conforming language to require a person to pay additional fees and costs in criminal or civil cases of \$20 for a teen court program if the court ordering the fee is located in the Texas-Louisiana border region; a \$20 fee to cover costs of required duties of teen court if the court ordering the fee is located in the Texas-Louisiana border region; a \$50 fee for DNA testing on commitment to certain facilities; a \$34 fee for DNA testing after placement on probation or as otherwise required by law (Family Code, §54.0462); and adds costs attendant to convictions under Penal Code, Chapter 49 (intoxication and Alcoholic Beverage Offense), and under Health and Safety Code, Chapter 481 (Texas Controlled Substance Act), to help fund drug court programs established under Health and Safety Code, Chapter 469 (Drug Court Programs), Code of Criminal Procedure, Art.102.0178 (Costs Attendant to Certain Intoxication and Drug Convictions).

Senate Bill 1208

Seventh Court of Appeals District Appellate Judicial System Support Fee

Effective January 1, 2010. Senate Bill 1208 amends Government Code, Chapter 22, by adding §22.2081, to create an appellate judicial system for the Seventh Court of Appeals District. To fund the system, the county commissioners court in each county in the Seventh District is required to set a court fee of \$5.00 for each civil suit filed in county court, county court at law, probate court or district court in the county. The court costs fee does not apply to a suit filed by the county or to a suit for delinquent taxes.

The bill amends Government Code, Chapter 101, by adding §101.06115, and adding conforming language to require the clerk of a district court in Seventh Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2081.

The bill amends Government Code, Chapter 101, by adding §101.08114, and adding conforming language to require the clerk of a statutory county court in Seventh Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2081.

The bill amends Government Code, Chapter 101, by adding §101.10114, and adding conforming language to require the clerk of a probate court in Seventh Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2081.

The bill amends Government Code, Chapter 101, by adding §101.12123, and adding conforming language to require the clerk of a county court in Seventh Court of Appeals District to collect an appellate judicial system fee of to set a court fee of \$5.00 under Government Code, §22.2131.

Senate Bill 1224

Waiver of Fee for Certain Expunctions

Effective January 1, 2010. Senate Bill 1224, amends Code of Criminal Procedure, Article 102.006, by adding subsection (b), to require that the fees under subsection (a) (relating to requiring a petitioner seeking expunction of a criminal record to pay certain fees) be waived if the petitioner seeks expunction of a criminal record that relates to and arrest for an offense of which the person was acquitted, other than an acquittal for an offense described by Code of Criminal Procedure, Article 55.01(c) (relating to prohibiting expunction of records for certain persons) and the petition for expunction is filed not later than the 30th day after the date of acquittal.

Senate Bill 1685

District Court Records Archive Fund

Effective June 19, 2009. Senate Bill 1658 amends Government Code, Chapter 51, by adding §51.305, to authorize the commissioners court of a county to adopt a district court records archive fee of not more than \$5.00 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition in a district court in the county as part of the county's annual budget. Requires that the fee be set and itemized in the county's budget as part of the budget preparation process and be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

The bill amends Government Code, §51.317, by adding subsection (b)(5) which adds conforming language to require the clerk of a district court to collect a district court records archive fee of not more than \$5.00 as adopted by the county commissioners court for district court archives preservation and maintenance.

The bill amends Government Code, Chapter 101, by adding §101.06116, and adding conforming language to require the clerk of a district court to collect a district court records archive fee of not more than \$5.00 under Government Code, §51.317(b)(5), if adopted by the county commissioners court.

TRD-200902917

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 17, 2009



Rural Veterinarian Loan Repayment Program - Appropriation Determination

House Bill 1684, 81st Legislature, 2009, relating to the Rural Veterinarian Loan Repayment Program, will be effective August 31, 2009. Article 2, §2.01(b), of the Act requires that no later than August 31, 2009, the Comptroller of Public Accounts shall make and publish in

the *Texas Register* a determination whether a specific appropriation in an amount not less than \$2,790,000 for the implementation of this Act is provided in a general appropriations act of the 81st Legislature, 2009.

The comptroller has determined that an appropriation in an amount of not less than \$2,790,000 has not been made by the 81st Legislature, 2009.

TRD-200902930

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 17, 2009



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/27/09 - 08/02/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/27/09 - 08/02/09 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/09 - 08/31/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/09 - 08/31/09 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200902973

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 21, 2009



Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from EDS Credit Union (#1), Plano, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following credit union location: 1 First American Way, Westlake, TX 76262, to be eligible for membership in the credit union.

An application was received from EDS Credit Union (#2), Plano, Texas to expand its field of membership. The proposal would remove exclusionary language associated with the merger of First American Federal Credit Union (FAFCU), Santa Ana, CA, from the field of membership of EDS Credit Union.

An application was received from EDS Credit Union (#3), Plano, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of

the following credit union location: 1 First American Way, Santa Ana, CA 92707, to be eligible for membership in the credit union.

An application was received from EDS Credit Union (#4), Plano, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or are located in Cumberland County, Pennsylvania, to be eligible for membership in the credit union.

An application was received from EDS Credit Union (#5), Plano, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten-mile radius of the following credit union location: 46910 Community Plaza, Sterling, VA 20164, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200903009

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 22, 2009

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department (Department) provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Associated Credit Union of Texas, Deer Park, Texas - See *Texas Register* issue, dated April 24, 2009.

Cabot & NOI Employees Credit Union, Pampa, Texas - See *Texas Register* issue, dated May 29, 2009.

Application for a Merger or Consolidation - Approved

First American Federal Credit Union (Santa Ana, CA) and EDS Credit Union (Plano) - See *Texas Register* issue, dated May 29, 2009.

TRD-200903010

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 22, 2009

Texas Education Agency

Correction of Error

The Texas Education Agency (TEA) adopted amendments to 19 TAC Chapter 100 concerning open-enrollment charter schools in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4119). Because the amendments were adopted without changes, the rules were not republished in the adoption notice. However, the text that TEA submitted

for §100.1022 and §100.1031 had errors that were incorporated into the Texas Administrative Code on-line.

The correct language has been restored to the Texas Administrative Code and is now available on the Secretary of State's web site.

TRD-200903034

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 31, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 31, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Jeffrey H. Jeong dba A J All Seasons 1; DOCKET NUMBER: 2009-0608-PST-E; IDENTIFIER: RN102714599; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(d)(4)(A)(ii)(II) and the Code, §26.3475(c)(1), by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour; PENALTY: \$3,850; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Amistad Lago Villa Homeowner's Association, Inc.; DOCKET NUMBER: 2009-0630-PWS-E; IDENTIFIER: RN104711247; LOCATION: Val Verde County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial, or industrial service connection; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction or any existing service; 30 TAC §290.46(s)(2)(C)(i), by

failing to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit; and 30 TAC §290.46(f), by failing to keep on file and make available for commission review water system records; PENALTY: \$2,622; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Leslie G. Perry dba Bilt Rite Portable Buildings; DOCKET NUMBER: 2009-0226-MLM-E; IDENTIFIER: RN105660179 and RN105662720; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial solid waste disposal site and manufacturing operation; RULE VIOLATED: 30 TAC §111.201 and §335.4 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning and by failing to prevent the unauthorized disposal of industrial solid waste; and 30 TAC §335.62, by failing to conduct hazardous waste determinations and classifications of waste streams generated at Site 2; PENALTY: \$2,649; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Citgo Refining and Chemicals Company L.P.; DOCKET NUMBER: 2009-0622-AIR-E; IDENTIFIER: RN102555166; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(1) and §116.115(c), Air Permit Number 46640, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: CLARA, INC. dba Clara's Store & Bakery; DOCKET NUMBER: 2009-0539-PST-E; IDENTIFIER: RN101497071; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with vapor control requirements for emission limitation anywhere in the liquid transfer or vapor balance system; and 30 TAC §115.222(6) and THSC, §382.085(b), by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; PENALTY: \$4,275; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(6) COMPANY: Dal-Tile Corporation; DOCKET NUMBER: 2009-0559-PST-E; IDENTIFIER: RN100216779; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: ceramic tile manufacturing plant; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,527; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: DEWAN ENTERPRISES, INC. dba Marium Food Store; DOCKET NUMBER: 2009-0581-PST-E; IDENTIFIER: RN102347812; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY:

\$3,080; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2009-0636-AIR-E; IDENTIFIER: RN100211366; LOCATION: Howard County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial emissions event notification; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final emissions event report within two weeks after the end of the emissions event; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(9) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2009-0568-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit (FOP) Numbers O-01870 and O-02039, SC Numbers 12 and 13, Air Permit Numbers 19566/PSD-TX-768M1, PSD-TX-932, and 49138, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,000; Supplemental Environmental Project (SEP) offset amount of \$8,000 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Clean School Buses; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Elias Farah and Mansour Ghaith dba Henderson Deli; DOCKET NUMBER: 2009-0565-PST-E; IDENTIFIER: RN102323375; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); PENALTY: \$5,976; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Huxley; DOCKET NUMBER: 2009-0493-PWS-E; IDENTIFIER: RN101193803; LOCATION: Shelbyville, Shelby County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4), TCEQ Agreed Order Docket Number 2004-0932-PWS-E, Ordering Provision Number 3, and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; and 30 TAC §290.113(f)(5), TCEQ Agreed Order Docket Number 2004-0932-PWS-E, Ordering Provision Number 3, and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acid; PENALTY: \$2,745; SEP offset amount of \$2,745 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: MAREDA, INC. dba Convenient Food Mart 4; DOCKET NUMBER: 2009-0420-PST-E; IDENTIFIER: RN102345550; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended UST registration; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a),

by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2)(A) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system; 30 TAC §334.46(g)(1)(G) and (H), by failing to ensure that all monitoring wells and observation wells are properly capped, labeled, and secured or locked to prevent unauthorized access, tampering, accidental depositing of unauthorized substances, and designed to divert surface runoff away from the well; 30 TAC §334.45(e)(2)(D), by failing to equip all fill pipes with a removable or permanent factory-constructed drop tube extending to within 12 inches of the tank bottom; and 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; PENALTY: \$19,701; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Marie Braden dba Nana's Kitchen; DOCKET NUMBER: 2009-0596-PWS-E; IDENTIFIER: RN101283109; LOCATION: Tow, Llano County; TYPE OF FACILITY: restaurant with a PWS; RULE VIOLATED: 30 TAC §290.46(f)(3)(B)(iii), by failing to provide facility disinfection records to commission personnel at the time of the investigation; 30 TAC §290.42(e)(3), by failing to install disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 30 TAC §290.43(c)(6), by failing to maintain all potable water storage tanks and associated appurtenances in a watertight condition; and 30 TAC §290.45(d)(2)(B)(v) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; PENALTY: \$562; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(14) COMPANY: NEW K & T QUICK STOP, INC. dba K & H Food Store; DOCKET NUMBER: 2009-0578-PST-E; IDENTIFIER: RN101570570; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2), by failing to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all metal components of the UST system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are functioning as designed; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to perform an operability test on a cathodic protection system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control

procedures for all USTs; and 30 TAC §334.74(1), by failing to conduct UST system tests to determine whether a leak exists in that portion of the tank that routinely contains product, the attached delivery piping, or both; PENALTY: \$10,416; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: NMAD ENTERPRISES, INC. dba Savannah Food & Deli; DOCKET NUMBER: 2009-0513-PST-E; IDENTIFIER: RN101774040; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of an UST system; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide proper release detection for the UST system by failing to conduct reconciliation of detailed inventory control records at least once each month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each current employee receives in-house Stage II vapor recovery training; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment and vapor space manifolding and dynamic back pressure; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; PENALTY: \$15,784; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Scenic Point Northview, Inc.; DOCKET NUMBER: 2009-0527-MWD-E; IDENTIFIER: RN101917458; LOCATION: Palo Pinto County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014173001, Interim Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for total residual chlorine; PENALTY: \$19,760; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Shareef I Enterprises, Inc. dba Beach Citgo; DOCKET NUMBER: 2009-0483-PST-E; IDENTIFIER: RN100532001; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,071; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Thomas M. Skelton and Phillis A. Skelton; DOCKET NUMBER: 2009-0508-EAQ-E; IDENTIFIER: RN105688295; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: commercial construction project site; RULE

VIOLATED: 30 TAC §213.4(a), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(19) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2009-0188-AIR-E; IDENTIFIER: RN102888328; LOCATION: La-Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.10(b)(2) and §122.143(4), FOP Number O-01424, Special Terms and Conditions (STC) Number 2.E., and THSC, §382.085(b), by failing to report accurate actual volatile organic compound (VOC) emissions; 30 TAC §115.126(3) and THSC, §382.085(b), by failing to maintain records sufficient to demonstrate that the B Line Finishing and Shipping System vents comply with the exemption limit; 30 TAC §115.726(b), (g)(2), (h)(2), and (i) and THSC, §382.085(b), by failing to comply with recordkeeping requirements; 30 TAC §101.393(b) and THSC, §382.085(b), by failing to hold a quantity of highly reactive (HR) VOC allowances in its HRVOC Emissions Cap and Trade Program compliance account; 30 TAC §101.20(2) and §113.890, New Source Review (NSR) Permit Number 5572B, SC Number 4, 40 Code of Federal Regulations §§63.2450(a), 63.2455(b), and 63.2520(a) and (d), 63.2525(a) and (b), 63.4(a)(1), and 63.10(b), and THSC, §382.085(b), by failing to comply with the requirement to designate the B Line Finishing and Shipping System vents as group one and group two vents; 30 TAC §116.115(b) and (c) and §122.143(4), NSR Permit Number 5572B, SC Number 1, FOP Number O-01424, General Terms and Conditions (GTC) and STC Number 9, and THSC, §382.085(b), by failing to comply with permitted emissions limits; and 30 TAC §122.132(a) and (e) and THSC, §382.085(b), by failing to include applicability provisions in a FOP; PENALTY: \$157,315; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Targa Midstream Services Limited Partnership; DOCKET NUMBER: 2009-0377-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas fractionator; RULE VIOLATED: 30 TAC §116.110(a)(1) and §116.116(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to route the hydrogen sulfide acid gas stream from the Amine Unit to the north plant flare; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 56431, SC Number 3D, FOP Number O-00612, STC Number 10, and THSC, §382.085(b), by failing to comply with the permitted limit of 50 pipeline shutdowns from the terminal; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 56431, SC Number 4, FOP Number O-00612, STC Number 10, and THSC, §382.085(b), by failing to comply with the permitted limit of 750 tank truck conditioning operations; PENALTY: \$65,450; SEP offset amount of \$26,180 applied to Barbers Hill Independent School District-Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Texas H2O, Inc.; DOCKET NUMBER: 2009-0311-PWS-E; IDENTIFIER: RN101223303; LOCATION: Comal County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-0491-AIR-E; IDENTIFIER:

RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02222, GTC, and THSC, §382.085(b), by failing to submit the annual compliance certification in a timely manner; PENALTY: \$9,475; SEP offset amount of \$3,790 applied to Port Arthur Alternative Fuel Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(23) COMPANY: V&M Star, a Partnership with General and Limited Partners, LP; DOCKET NUMBER: 2009-0317-IWD-E; IDENTIFIER: RN100215474; LOCATION: Channelview, Harris County; TYPE OF FACILITY: tubular goods end finishing plant with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0003787000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total suspended solids and total copper; PENALTY: \$5,670; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: ZEBA, INC. dba Snappy Foods 3; DOCKET NUMBER: 2009-0586-PST-E; IDENTIFIER: RN101885887; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200902972

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 21, 2009



Enforcement Orders

A default order was entered regarding Arturo Maldonado dba Truck Town Body & Paint, Docket No. 2006-1602-AIR-E on July 9, 2009 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL Petrochemicals USA, Inc., Docket No. 2007-0172-AIR-E on July 9, 2009 assessing \$749,910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. O. T. Transport. Ltd., Docket No. 2007-0465-IHW-E on July 14, 2009 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Effluent Recycling, Inc., Docket No. 2007-0619-MLM-E on July 9, 2009 assessing \$86,660 in administrative penalties with \$83,060 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K.L. Comfort Park, Ltd., Docket No. 2007-0789-PWS-E on July 9, 2009 assessing \$1,102 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores, Docket No. 2007-0978-PST-E on July 9, 2009 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cha, Inc. dba Milo's One Stop, Docket No. 2007-1246-PST-E on July 9, 2009 assessing \$6,230 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tex-Wave Industries, L.P., Tex-Wave Management, L.L.C., David Croft, and Monty Guiles, Docket No. 2007-1347-MLM-E on July 9, 2009 assessing \$38,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Chanthorn Patrick Tes dba 34 Express, Docket No. 2007-1577-PST-E on July 14, 2009 assessing \$26,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Douglas Adcock dba McDonald's, Docket No. 2007-1796-MWD-E on July 9, 2009 assessing \$11,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosque County, Docket No. 2007-1844-MSW-E on July 14, 2009 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jeff Dutton dba Dutton Cattle Company, Docket No. 2008-0059-MLM-E on July 9, 2009 assessing \$9,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sue Goins dba 67 Bait Shop, Docket No. 2008-0109-PST-E on July 9, 2009 assessing \$9,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Juan Miguel Mata, Docket No. 2008-0111-MSW-E on July 9, 2009 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Churches Hill Grocery, Inc. dba Jiffy Mart 6, Docket No. 2008-0189-PST-E on July 9, 2009 assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River Service Corporation, Docket No. 2008-0269-MSW-E on July 9, 2009 assessing \$9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gian O'Donnell dba American Convenience, Docket No. 2008-0287-PST-E on July 9, 2009 assessing \$3,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ken Jenkins, Docket No. 2008-0441-EAQ-E on July 9, 2009 assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Industrial Anchors, Inc., Docket No. 2008-0470-WQ-E on July 9, 2009 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard Green dba R & B Homes, Docket No. 2008-0555-WQ-E on July 9, 2009 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 5D Drilling & Pump Service, Inc. dba Davenport Drilling and Pump Service, Docket No. 2008-0743-MLM-E on July 9, 2009 assessing \$11,426 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn Horvath dba Aero Valley Water Service, Docket No. 2008-0962-PWS-E on July 9, 2009 assessing \$5,133 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lakewood on Lake Conroe Property Owners Association, Inc., Docket No. 2008-1029-PWS-E on July 9, 2009 assessing \$318 in administrative penalties with \$63 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Wells, Docket No. 2008-1160-MWD-E on July 9, 2009 assessing \$11,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding The J.W. Grimes Family Limited Partnership, Docket No. 2008-1187-MSW-E on July 9, 2009 assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2008-1398-IHW-E on July 9, 2009 assessing \$12,650 in administrative penalties with \$2,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KANEKA TEXAS CORPORATION dba Kaneka High Tech Materials, Docket No. 2008-1465-AIR-E on July 9, 2009 assessing \$5,150 in administrative penalties with \$1,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Logics Enterprise, L.L.C. dba Goodrich Food Mart, Docket No. 2008-1544-PST-E on July 14, 2009 assessing \$35,696 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tommy Henson, Staff Attorney at (512) 239-0946, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bosque Basin Water Supply Corporation, Docket No. 2008-1593-PWS-E on July 9, 2009 assessing \$1,573 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Young dba Royal Coach Mobil Home Village, Docket No. 2008-1643-PWS-E on July 14, 2009 assessing \$754 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2008-1807-PWS-E on July 9, 2009 assessing \$48,747 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of the Army, Docket No. 2008-1853-WQ-E on July 9, 2009 assessing \$855 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Berry Contracting, L.P. dba Bay LTD., Docket No. 2008-1910-PST-E on July 9, 2009 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Child Inc. dba Flat Creek Crossing Ranch, Docket No. 2008-1918-PWS-E on July 9, 2009 assessing \$2,168 in administrative penalties with \$433 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lide Industries, LLC, Docket No. 2008-1919-AIR-E on July 9, 2009 assessing \$30,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LI Holdings, Inc. (formerly known as Lide Industries, Inc.), Docket No. 2008-1926-AIR-E on July 14, 2009 assessing \$28,378 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARIBAR, LLC dba MART FOOD MART, Docket No. 2008-1970-PST-E on July 9, 2009 assessing \$8,453 in administrative penalties with \$1,690 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Graham, Enforcement Coordinator at (806) 796-7635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JONESTOWN INVESTMENTS, INC. dba Jonestown Texaco, Docket No. 2009-0027-PST-E on July 9, 2009 assessing \$4,339 in administrative penalties with \$867 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plano, Docket No. 2009-0034-AIR-E on July 9, 2009 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cotulla, Docket No. 2009-0044-MWD-E on July 9, 2009 assessing \$25,166 in administrative penalties with \$5,033 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Safety-Kleen Systems, Inc., Docket No. 2009-0074-IHW-E on July 9, 2009 assessing \$1,750 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2009-0102-AIR-E on July 9, 2009 assessing \$5,643 in administrative penalties with \$1,128 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Estates at Huntress Lane, LP, Post Oak Development of Texas, Inc., Docket No. 2009-0124-

EAQ-E on July 9, 2009 assessing \$17,500 in administrative penalties with \$3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2009-0132-AIR-E on July 9, 2009 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GJN L.L.C. dba Sunmart 141, Docket No. 2009-0136-PST-E on July 9, 2009 assessing \$8,601 in administrative penalties with \$1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2009-0147-AIR-E on July 9, 2009 assessing \$2,575 in administrative penalties with \$515 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Frisco, Docket No. 2009-0166-WQ-E on July 9, 2009 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2009-0171-AIR-E on July 9, 2009 assessing \$5,357 in administrative penalties with \$1,071 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sanger, Docket No. 2009-0183-MWD-E on July 14, 2009 assessing \$5,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Horizons Ranch and Center, Inc., Docket No. 2009-0191-PWS-E on July 9, 2009 assessing \$1,005 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Operating Partnership L.P., Docket No. 2009-0194-IWD-E on July 14, 2009 assessing \$20,400 in administrative penalties with \$4,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2009-0220-AIR-E on July 9, 2009 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodell Water System, Inc., Docket No. 2009-0230-PWS-E on July 9, 2009 assessing \$1,909 in administrative penalties with \$381 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearland, Docket No. 2009-0237-MWD-E on July 9, 2009 assessing \$16,950 in administrative penalties with \$3,390 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pure Utilities, L.C., Docket No. 2009-0238-PWS-E on July 9, 2009 assessing \$1,996 in administrative penalties with \$399 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAMIR, INC. dba Shop N Go, Docket No. 2009-0255-PST-E on July 9, 2009 assessing \$7,597 in administrative penalties with \$1,519 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apac-Texas, Inc., Docket No. 2009-0257-AIR-E on July 14, 2009 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trent Water Works, Inc., Docket No. 2009-0260-PWS-E on July 14, 2009 assessing \$1,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CenterPoint Energy Field Services, Inc., Docket No. 2009-0268-AIR-E on July 9, 2009 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAROON & KHALID INVESTMENT INC. dba Telephone Road Shell, Docket No. 2009-0272-PST-E on July 9, 2009 assessing \$4,221 in administrative penalties with \$844 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bi-County Water Supply Corporation, Docket No. 2009-0274-PWS-E on July 9, 2009 assessing \$575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tenaska Frontier Partners, LTD., Docket No. 2009-0277-AIR-E on July 9, 2009 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tes Woldu dba T Food Mart, Docket No. 2009-0281-PST-E on July 9, 2009 assessing \$2,337 in administrative penalties with \$467 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ineos USA, LLC, Docket No. 2009-0292-AIR-E on July 9, 2009 assessing \$60,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pedro Callejas, Docket No. 2009-0302-LII-E on July 9, 2009 assessing \$743 in administrative penalties with \$148 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of West Tawakoni, Docket No. 2009-0309-PWS-E on July 9, 2009 assessing \$5,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 249, Docket No. 2009-0318-MWD-E on July 9, 2009 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Combined Consumers Special Utility District, Docket No. 2009-0334-PWS-E on July 9, 2009 assessing \$720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2009-0339-AIR-E on July 14, 2009 assessing \$10,439 in administrative penalties with \$2,087 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 130, Docket No. 2009-0346-MWD-E on July 14, 2009 assessing \$5,800 in administrative penalties with \$1,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & J Excavating, Inc., Docket No. 2009-0349-WQ-E on July 9, 2009 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Granite Stonebridge Health Center LLC, Docket No. 2009-0366-MWD-E on July 9, 2009 assessing \$14,250 in administrative penalties with \$2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry G. Little, Docket No. 2009-0407-WOC-E on July 9, 2009 assessing \$718 in administrative penalties with \$143 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2009-0412-PWS-E on July 9, 2009 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Barge & Boat, Inc., Docket No. 2009-0433-IWD-E on July 9, 2009 assessing \$5,970 in administrative penalties with \$1,194 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XTO Energy Inc., Docket No. 2009-0450-AIR-E on July 9, 2009 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Joe McHaney dba Envirosol Environmental Services, Docket No. 2005-1742-MLM-E on July 9, 2009 assessing \$29,903 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PAUL LaVOIE, Docket No. 2007-0382-MLM-E on July 13, 2009 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RODNEY HYER, Docket No. 2007-0553-PST-E on July 13, 2009 assessing \$10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding LEDEZMA READY MIX LLC, Docket No. 2009-0384-WQ-E on July 9, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Air Liquide Large Industries U.S. LP, Docket No. 2009-0425-WQ-E on July 9, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cory L. James, Docket No. 2009-0517-WOC-E on July 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding The Crosby Group, Inc., Docket No. 2009-0548-WQ-E on July 9, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding TransPecos Foods, L.P., Docket No. 2009-0549-WQ-E on July 9, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Whitehead Construction, Inc. dba Ponderosa Estates, Docket No. 2009-0550-WQ-E on July 9, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jon D. Piatt, Docket No. 2009-0564-OSI-E on July 9, 2009 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200903024

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2009



Notice of Availability of the Draft July 2009 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2009 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft July 2009 WQMP update may be found on the commission's Web site located at http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on August 30, 2009. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@tceq.state.tx.us.

TRD-200902918

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 17, 2009



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 281, and 295

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapters 39 Public Notice, 281 Applications Processing, and 295 Water Rights, Procedural under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would address the situation that arises when notices are mailed long before the application is acted upon, and there are new entities that may be potentially affected but are not reflected on the landowner or other mailing list. The rules will only apply to water quality and water right applications. Proposed §39.551 would state that for a water quality application, if the Notice of Application and Preliminary Decision (NAPD) is being mailed more than two years after the Notice of Receipt and Intent to obtain a permit was mailed, the applicant must prepare an updated landowner list for the NAPD. Proposed §281.17 would change the date that notice will be mailed for a water rights permit from after administrative completeness to after technical completeness. For water rights, the proposed amendments to §295.151 and §295.158 would change the time that notice is provided from after administrative review to after technical review is completed.

The commission will hold a public hearing on this proposal in Austin on August 18, 2009 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jessica Rawlings, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

Comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2009-028-295-LS. The comment period closes August 24, 2009. Copies of the proposed rules can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Robin Smith, Environmental Law Division, (512) 239-0463; Sherry Smith, Water Quality Division, (512) 239-0571; or Ronald Ellis, Water Supply Division, (512) 239-1282.

TRD-200902967

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 20, 2009



Notice of Water Quality Applications

The following notices were issued on June 29, 2009 through July 17, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

TICONA POLYMERS INC which operates the Bishop Plant, which manufactures organic chemicals, plastics, and bulk pharmaceuticals, and purifies and packages sodium formate, has applied for a renewal of TPDES Permit No. WQ0000579000, which authorizes the discharge of previously monitored effluents (including process wastewater, miscellaneous non-process wastes, and domestic wastewater via internal Outfall 101), reverse osmosis reject, cooling tower blowdown, boiler blowdown, hydrostatic test water, and storm water at a daily average dry weather flow not to exceed 3,500,000 gallons per day via Outfall 001; and storm water, hydrostatic test water, and utility wastewater on an intermittent and flow variable basis via Outfall 002. The facility is located adjacent to State Business Highway 77 South, approximately one mile southwest of the City of Bishop, Nueces County, Texas.

FANNETT SEWER SERVICE AND WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014867001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility will be located 6,200 feet south of the intersection of Farm-to-Market Road 365 and Gaulding Road in Jefferson County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CHEMICAL SPECIALTIES INC DBA MINERAL RESEARCH AND DEVELOPMENT, A Division of Chemical Specialties, Inc., which operates the Mineral Research and Development Plant, has applied for a renewal of TPDES Permit No. WQ0001878000, which authorizes the discharge of process effluent commingled with sanitary waste, utility wastewater, vacuum pump seal water, and first-flush storm water at a daily average flow not to exceed 270,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 302 Midway Road, north and east of the City of Freeport, Brazoria County, Texas.

SI GROUP INC - TEXAS OPERATIONS, an alkyl phenol/petrochemical plant, has applied for a renewal of TPDES Permit No. WQ0001961000, which authorizes the discharge of utility wastewater (boiler blowdown, cooling tower blowdown, and water treatment

wastewater), storm water runoff, and previously monitored effluents (process wastewater and storm water runoff) at a daily average flow not exceeding 1,400,000 gallons per day during dry weather conditions via Outfall 001. The facility is located at 702 Farm-to-Market Road 523, approximately 0.5 mile southwest of the intersection of Farm-to-Market Road 523 and State Highway 332 in the City of Freeport, Brazoria County, Texas 77541.

POSTIVE FEED LTD which operates Postive Feed, Ltd., has applied for a renewal of TPDES Permit No. WQ0002314000, which authorizes the discharge of irrigation field runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 1912 State Highway 36 North, on the east side of State Highway 36, and approximately 0.3 mile northeast of the intersection of State Highway 36 and Farm-to-Market Road 2187, Austin County, Texas 77474.

KMCO LP which operates KMCO plant, has applied for a renewal of TPDES Permit No. WQ0002712000, which authorizes Discharge permits: the discharge of treated process wastewater, treated domestic wastewater, boiler blowdown, cooling tower blowdown, and storm water at a daily average flow not to exceed 0.120 million gallons per day via Outfall 001, and untreated storm water on an intermittent and flow variable basis via Outfall 002, which is located at 16503 Ramsey Road, at the intersection with Crosby-Dayton Road, 1.2 miles north-east of the City of Crosby, Harris County, Texas.

CAPROCK WINE COMPANY LLC which operates Caprock Winery WWTP, which operates a facility for the production and retail sale of wine, has applied for a renewal of TCEQ Permit No. WQ0003034000, which authorizes the disposal of process wastewater generated during grape crushing, tank and floor washdown, and the bottling process not exceed 1,000 gallons per day daily average (October to July) and 2,000 gallons per day daily average (August and September) from the plant to the effluent treatment system; never to exceed 10,000 gallons per day daily maximum from the plant site to the effluent treatment system via irrigation of 4.1 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately 2.4 miles south of the intersection of U.S. Highway 87 and Farm-to-Market 1585, 0.8 mile from this point east of U.S. Highway 87, Lubbock County, Texas.

AKZO NOBEL CHEMICALS INC (Owner) and AKZO NOBEL POLYMER CHEMICALS LLC (Operator), which operates Akzo Nobel Polymer Chemicals Deer Park, an organometallic compound manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0004119000, which authorizes the discharge of storm water associated with industrial activity, domestic wastewater, and cooling tower blowdown at a daily average dry weather flow not to exceed 30,000 gallons per day via Outfall 001. The facility is located east of and adjacent to State Highway 134, approximately 2,500 feet north of the intersection of State Highways 134 and 225, in the Extra Territorial Jurisdiction (ETJ) of La Porte, Harris County, Texas 77536.

BUSINESS JET CENTER LTD which operates aircraft hangar and fueling activities at Dallas Love Field Airport, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004871000, to authorize a discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfall 001. The facility is located at 8611 Lemmon Road, Dallas, 75209, Dallas County, Texas.

INTERCHEM INC which proposes to operate Interchem Plant, a high-end organic chemical manufacturing facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004873000, to authorize the discharge of reverse osmosis wastewater, process wastewater (mixer washdown and reactor washdown), contact storm water, and non-contact storm water on an

intermittent and flow variable basis via Outfall 001. The facility is located approximately 0.6 mile south of Interstate Highway 90/State Highway 146 at 1502 Fort Worth Street, Liberty County, Texas 77575.

CITY OF HIDALGO has applied for a major amendment to TPDES Permit No. WQ0011080001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,200,000 gallons per day to an annual average flow not to exceed 2,700,000 gallons per day. The facility is located east of the City of Hidalgo, approximately 0.5 mile north of U.S. Highway 281 and 0.5 mile east of Farm-to-Market Road 336 in Hidalgo County, Texas 78557.

LEE COUNTY FRESH WATER SUPPLY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0012007001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately 0.5 mile northeast of the City of Dime Box and 3,000 feet east-northeast of the intersection of Farm-to Market Road 141 and the Southern Pacific Railroad in Lee County, Texas.

VICTORIA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0012743001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 72,000 gallons per day. The facility is located approximately 3,000 feet north-northeast of the intersection of U.S. Highway 87 and Farm-to-Market Road 616, southeast of the intersection of Grand Street and Preston Street in the City of Placedo in Victoria County, Texas 77977.

SHELBYVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013370001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The facility is located 1,000 feet due south of the intersection of Farm-to-Market Road 417 and State Highway 87, on the west side of State Highway 87 in Shelby County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 459 has applied for a renewal of TPDES Permit No. WQ0014554001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located approximately one mile southeast of the intersection of Interstate 10 and Sjolander Road in Harris County, Texas.

If you need more information about these permit applications or the permitting process; please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903022

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2009



Notice of Water Rights Application

Notice issued July 14, 2009.

APPLICATION NO. 05-4675A; The City of Canton, Applicant, P.O. Box 245, Canton, Texas 75103-0245, has applied for an amendment to authorize the use of the bed and banks of Mill Creek, Sabine River Basin, to transport historical and future groundwater and surface water return flows and to divert these return flows for industrial and municipal purposes in Van Zandt County. More information on the application and how to participate in the permitting process is given below. The

application and a portion of the required fees were received on December 15, 2008. Additional information and remaining fees were received on March 20 and May 5, 2009. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 6, 2009. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 18, 2009.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903023

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2009



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 15, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Paul Vinson; SOAH Docket No. 582-09-1144; TCEQ Docket No. 2007-1566-LII-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Paul Vinson on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of

this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200903025

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2009



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 13, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Weirich Brothers, L.P.; SOAH Docket No. 582-09-1256; TCEQ Docket No. 2008-0642-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Weirich Brothers, L.P. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200903026

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2009



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is August 1, 2009. This notice amends the original notice published in the July 3, 2009 issue of the *Texas Register* (34 TexReg 4566) by changing the effective date from September 1, 2009 to August 1, 2009.

The proposed amendment will adjust payment rates for the Day Activity and Health Services (DAHS) program to comply with the new federal minimum wage that will increase by \$0.70 from the current \$6.55 per hour to \$7.25 per hour on July 24, 2009. This change also is a result of the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for the DAHS Program. The reimbursement methodology will be modified to indicate that for the period beginning August 1, 2009, DAHS payment rates will be equal to the payment rates in effect July 31, 2009, plus \$0.30 per unit of service.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$371,624 for the remainder of federal fiscal year (FFY) 2009 (August 1, 2009, through September 30, 2009), with approximately \$255,529 in federal funds and approximately \$116,095 in state general revenue. For FFY 2010, the proposed

adjustment of payment rates is estimated to result in additional annual aggregate expenditures of \$2,236,856, with approximately \$1,562,444 in federal funds and approximately \$674,412 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Sarah Hambrick by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1431; by facsimile at (512) 491-1998; or by e-mail at sarah.hambrick@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902931

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 17, 2009



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective August 1, 2009. This notice amends, as to Texas Health Steps Personal Care Services, the original notice published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4221).

The amendment will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

Texas Health Steps (THSteps) Personal Care Services (PCS)

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$620,101 for federal fiscal year (FFY) 2009, with approximately \$422,165 in federal funds and \$197,936 in State General Revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is \$3,923,380, with approximately \$2,684,769 in federal funds and \$1,238,611 in GR. For FFY 2011, the estimated additional aggregate expenditure is \$4,057,953, with approximately \$2,498,076 in federal funds and \$1,559,877 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200903011

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2009



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective August 31, 2009.

The amendment will modify the reimbursement methodologies in the Texas Medicaid State Plan to reflect Medicaid fee changes for the following service:

Physicians and Certain Other Practitioners (Licensed Psychological Associates)

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$264,498 for federal fiscal year (FFY) 2009, with approximately \$181,869 in federal funds and \$82,629 in State General Revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is \$3,173,979, with approximately \$2,166,558 in federal funds and \$1,007,421 in GR. For FFY 2011, the estimated additional aggregate expenditure is \$6,849,448, with approximately \$4,171,999 in federal funds and \$2,677,449 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and

Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200903012

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 22, 2009

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Texas Heart and Vascular P.A.	L06239	Austin	00	07/07/09
Beaumont	Metropolitan Cardiology P.A.	L06258	Beaumont	00	07/06/09
Pasadena	Sekisui Specialty Chemicals America L.L.C.	L06260	Pasadena	00	07/02/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alvin	Equistar Chemicals L.P.	L03363	Alvin	27	07/13/09
Austin	Austin Heart P.A.	L04623	Austin	63	07/01/09
Austin	Texas Cardiovascular Consultants P.A.	L05246	Austin	33	07/06/09
Austin	The University of Texas at Austin	L00485	Austin	80	07/13/09
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	91	07/02/09
Clute	Professional Service Industries Incorporated	L04938	Clute	09	07/08/09
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	88	06/26/09
Corpus Christi	Cardiology Associates of Corpus Christi	L04611	Corpus Christi	28	07/13/09
Dallas	Methodist Hospitals of Dallas, Radiology Svcs.	L00659	Dallas	66	06/30/09
Dallas	Petnet Solutions Inc.	L05193	Dallas	36	06/30/09
Dallas	Mallinckrodt Inc.	L03580	Dallas	65	07/15/09
Edinburg	Doctors Hospital at Renaissance Ltd. dba Doctors Hospital at Renaissance	L05761	Edinburg	20	07/03/09
El Paso	The University of Texas at El Paso	L00159	El Paso	61	07/01/09
El Paso	Cardinal Health	L01999	El Paso	112	07/08/09
El Paso	Guillermo A. Pinzon, M.D. P.A.	L04277	El Paso	17	07/08/09
El Paso	East El Paso Physicians Medical Center	L05676	El Paso	16	07/14/09
Fort Worth	Physician Reliance L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	30	06/30/09
Fort Worth	Columbia Plaza Medical Center of Ft. Worth Subsidiary L.P. dba Plaza Medical Center of Fort Worth	L02171	Fort Worth	55	07/08/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	143	07/03/09
Houston	Mallinckrodt Medical Inc.	L03008	Houston	80	07/08/09
Houston	Willowbrook Cardiovascular Associates P.A.	L05090	Houston	08	07/03/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	53	07/06/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	54	07/08/09
Houston	Statewide Maintenance Company	L06229	Houston	01	07/07/09
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	06	07/10/09
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	02	07/10/09
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	03	07/13/09
Houston	The Methodist Hospital	L00457	Houston	169	07/14/09
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	75	06/30/09
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	76	07/07/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Huntsville	Huntsville Memorial Hospital	L02822	Huntsville	17	07/03/09
Kingwood	North Houston Heart and Vascular Assoc. P.A. dba Houston Heart and Vascular Associates	L06121	Kingwood	01	07/01/09
Laredo	Laredo Regional Medical Center L.P. dba Doctors Hospital of Laredo	L02192	Laredo	36	06/30/09
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	55	07/09/09
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	29	06/29/09
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	N. Richland Hills	58	07/09/09
Paris	Physician Reliance Network Inc. dba Paris Regional Cancer Center	L04664	Paris	19	07/02/09
Pasadena	AES Deepwater Inc.	L03746	Pasadena	16	07/09/09
Pasadena	Turner Industries Group L.L.C.	L06235	Pasadena	02	07/08/09
Richardson	Amtech Building Sciences Inc.	L04486	Richardson	11	07/09/09
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	176	07/01/09
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	209	06/30/09
Throughout Tx	Lotus L.L.C.	L05147	Andrews	18	07/02/09
Throughout Tx	Reinhart and Associates Inc.	L03189	Austin	44	07/03/09
Throughout Tx	KXR Inspection Inc.	L01074	Barker	111	07/08/09
Throughout Tx	Irisndt Inc.	L04769	Deer Park	75	07/09/09
Throughout Tx	Licon Engineering Company Inc.	L05530	El Paso	07	07/01/09
Throughout Tx	Professional Service Industries Inc.	L00931	Fort Worth	117	07/09/09
Throughout Tx	Weatherford International Inc.	L04286	Fort Worth	81	07/01/09
Throughout Tx	TSIT	L05697	Fort Worth	05	07/01/09
Throughout Tx	Professional Service Industries	L04944	Harlingen	11	07/08/09
Throughout Tx	Earthco L.L.C.	L06213	Harlingen	01	07/13/09
Throughout Tx	Metco	L03018	Houston	200	07/07/09
Throughout Tx	Testmasters Inc.	L03651	Houston	30	07/02/09
Throughout Tx	Express Energy Services	L06111	Houston	03	07/01/09
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	69	07/01/09
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	70	07/15/09
Throughout Tx	URI Inc.	L06158	Lewisville	01	07/08/09
Throughout Tx	Professional Service Industries	L04941	Longview	09	07/08/09
Throughout Tx	Hi-Tech Testing Service Inc.	L05021	Longview	77	07/09/09
Throughout Tx	Perf-O-Log L.L.C.	L05478	Midland	24	07/01/09
Throughout Tx	Techcorr USA L.L.C.	L05972	Palestine	64	07/14/09
Throughout Tx	Conam Inspection & Engineering Inc.	L05010	Pasadena	169	07/09/09
Throughout Tx	Techcorr USA L.L.C.	L05972	Pasadena	63	07/02/09
Throughout Tx	GCT Inspection Inc.	L02378	South Houston	104	07/07/09
Throughout Tx	Advanced Inspection Technologies	L06228	Spring	01	07/15/09
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugarland	113	07/07/09
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugarland	154	07/07/09
Throughout Tx	Professional Service Industries	L04943	Victoria	07	07/08/09
Throughout Tx	Kleinfelder Central Inc.	L01351	Waco	66	07/07/09
Uvalde	Uvalde County Hospital Authority dba Uvalde Memorial Hospital	L03327	Uvalde	18	06/30/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Texas QA Services Inc.	L04601	Grand Prairie	24	06/26/09
Throughout Tx	Halliburton Energy Services Inc.	L02113	Houston	114	07/07/09
Throughout Tx	Wrangler Wireline Inc.	L05404	Sour Lake	06	07/02/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	ARMC L.P. dba Abilene Regional Medical Center	L02126	Abilene	19	07/08/09
Houston	Vital Imaging Companies dba Lifeline Imaging L.L.C.	L05405	Houston	03	06/25/09
Houston	Park Plaza Hospital	L01812	Houston	24	07/13/09
Longview	ADJ Services	L04142	Longview	16	07/09/09
Richardson	Richardson Cardiology Associates	L05667	Richardson	09	07/08/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200902975
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 21, 2009



Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code, §§300w et seq.) the Department of State Health Services (department) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2010. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a work plan) of the intended use of block grant funds in advance of each FFY. Each state is required to hold hearings and to make proposals of these descriptions public within each state in such a manner as to facilitate comments.

In FFY 2010, six activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, border health and colonias, behavioral risk factor surveillance system, trauma registry, local health departments, and Health Service Regions.

The PHHSBG award for FFY 2009 was \$4,165,352. Of this amount, \$510,620 was required for use in sexual assault prevention and crisis services. The department has prepared the following schedule for the development and review of the 2010 Work Plan for the PHHSBG. In August of 2009, the department will hold public hearings in five Health Service Regions:

August 10, 2009 (10:00 a.m. - 12:00 p.m.)

Health Service Region 6/5S, Elias Ramirez State Office Building, Room 4B - 4E, 5425 Polk Street, Houston, Texas

August 10, 2009 (4:00 p.m. - 6:00 p.m.)

Health Service Region 7, Department of State Health Services, 1100 West 49th Street, Conference Room K-100, Austin, Texas

August 11, 2009 (10:00 a.m. - 12:00 p.m.)

Health Service Region 8, 7430 Louis Pasteur Drive, Room 130, San Antonio, Texas

August 12, 2009 (9:00 a.m. - 11:00 a.m.)

Health Service Region 1, 1109 Kemper Street, Conference Room #8, Lubbock, Texas

August 13, 2009 (2:00 p.m. - 4:00 p.m.)

Health Service Region 11, 601 West Sesame Drive, Rockport Room, Harlingen, Texas

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of a published summary of these hearings. In October 2009, the department will prepare the FFY 2010 Work Plan for the PHHSBG and forward it to the federal government.

Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures.

Written comments regarding the PHHSBG may be submitted through August 21, 2009, to Amy Pearson, Block Grant Coordinator, Division for Regional and Local Health Services, Mail Code 1908, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or via email at amy.pearson@dshs.state.tx.us. For further information, please contact Ms. Pearson at (512) 458-7111, extension 2028.

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program 2009 Single Family Housing Programs for Persons with Disabilities Notice of Funding Availability

(1) Summary.

(a) The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately \$1,763,538 in funding from the HOME Investment Partnerships Program (HOME) allocation for single family housing programs including Homebuyer Assistance (HBA) and Tenant-Based Rental Assistance (TBRA) to assist low-income persons with disabilities.

(b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR §92), and Chapter 2306 of the Texas Government Code. Other federal regulations apply, including but not limited to:

- (i) 24 CFR Parts 50 and 58 (Environmental Requirements);
- (ii) 24 CFR §85.36 and §84.42 (Procurement and Conflict of Interest Regulations); and
- (iii) 24 CFR §5(A) (Federal Fair Housing Regulations).

(2) **Source of Funds.** These funds are made available through the Department's deobligated HOME funds, unallocated 2008 funds, and the 2009 annual HOME allocation reserved for persons with disabilities from the U.S. Department of Housing and Urban Development (HUD). These funds are set-aside for eligible applicants proposing to provide assistance to eligible homebuyers for the acquisition (including downpayment and closing costs) of or acquisition and rehabilitation for accessibility of single family housing and households seeking rental subsidies, including security and utility deposits, through tenant-based rental assistance. Households assisted must be at or below 80% of the Area Median Family Income (AMFI) as defined by HUD, and, in accordance with §2306.111(c)(2) of the Texas Government Code, be composed of at least one household member who meets the definition of a person with a disability, as defined by HUD, who lives in any area of the this state.

(3) Allocation of Funds.

(a) In accordance with §2306.111 of the Texas Government Code, these funds are not subject to the Regional Allocation Formula (RAF).

(b) A total of \$1,763,538 in funds is available and is comprised of \$1,196,677 in 2009 funds for Single Family Housing Programs for Persons with Disabilities available for use statewide, as published in the 2009 State of Texas Consolidated Plan One-Year Action Plan, \$137,202 in unused funds from 2008 NOFAs for Persons with Disabilities available for use statewide, and \$429,659 in unused funds which must be used in non-PJ areas.

(c) For the first one-hundred-eighty (180) days of this NOFA or until 5:00 p.m. Tuesday, February 2, 2010, \$881,769 of the funds will be available for the HBA Activity and \$881,769 will be available for

the TBRA Activity. These amounts consist of \$666,939 available statewide (including PJs) and \$214,830 restricted to non-PJ areas of the state, for each of the Program Activities.

(4) Application Cycle.

(a) In accordance with 10 TAC §53.48(a) this NOFA will be an open application cycle with funds available on a first-come, first-served basis. Applications will be accepted by the Department only from those applicants requesting TBRA funds proposing to assist persons transitioning from an institution where at least 25% of the total households proposed must be targeted to persons transitioning from an institutional setting into a community placement or community setting until all funds have been requested or 5:00 p.m. Friday, October 30, 2009, regardless of method of delivery.

(b) On Monday, November 2, 2009, funds not requested under the first 90-day cycle will be made available to any eligible applicant under each activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until all funds have been requested or 5:00 p.m. Tuesday, February 2, 2010, regardless of method of delivery.

(c) On Wednesday, February 3, 2010, any remaining funds not requested under either the HBA or TBRA set-aside will be made available to either activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until all funds have been requested or 5:00 p.m. Friday, May 28, 2010.

(d) Should funds made available under this NOFA become, at any time, oversubscribed or all funds be awarded; the Department may choose to close the NOFA in accordance to 10 TAC §53.48(a)(1).

(5) **Rider 5 Provision.** Applicants awarded funds may use the state average median family income, adjusted for income level and household size, to determine income eligibility for eligible households living in those counties where the area median family income is lower than the state average median family income. This option is in accordance with the Housing Assistance Rider of the Department's Legislative Appropriation.

(6) Limitation on Funds.

(a) Except for the \$429,659 limited for use in non-PJ areas, all funds are eligible for use in any area of the state including in a Participating Jurisdiction (PJ) as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

(b) The Department awards HOME funds to eligible entities. The maximum award amount may not exceed \$318,000, including administrative costs, for Homebuyer Assistance and \$318,000, including administrative costs, for Tenant-Based Rental Assistance. Up to \$530,000, including administrative costs may be awarded to Homebuyer Assistance applicants whose Service Area includes multiple counties within a Uniform State Service Region.

(c) An applicant may submit an Application to apply for additional funding as long as the Applicant is 100% committed on their current contract for the same activity.

(d) With the exception of Tenant-Based Rental Assistance, the minimum HOME assistance amount per unit may not be less than \$1,000 per HOME assisted unit. The per-unit subsidy may not exceed limits established under §221(d)(3) of the National Housing Act, which are applicable to the area in which the housing is located and as published by HUD. The purchase price of the housing unit plus the value of the rehabilitation or reconstruction, if applicable, must not exceed 95% of the Single Family Mortgage Limits under §203(b) of the National Housing Act.

(e) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. In accordance with 10 TAC §53.85(a)(1), for Program Activities that are serving Persons with Disabilities, funds for Administrative Costs cannot exceed 6% of the total project costs for the entire Contract term. Administrator must use funds for Administrative costs in accordance with 24 CFR §92.207.

(f) In accordance to 10 TAC §53.72, before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

(7) Eligible and Ineligible Applicants.

(a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

(b) If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

(c) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(8) Eligible and Prohibited Activities.

(a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.32 for HBA and §53.33 for TBRA.

(b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

(9) Homebuyer Assistance (HBA). Until 5:00 p.m. Tuesday, February 2, 2010, approximately \$881,768 of HOME Funds released under this NOFA shall be set-aside for Homebuyer Assistance. This program activity may be used to provide downpayment, closing cost (including soft costs), and rehabilitation assistance to eligible first time homebuyers earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD for the acquisition of affordable single family housing. If needed, rehabilitation assistance must be provided for required accessibility modifications.

(a) Maximum Award. In accordance with 10 TAC §53.47(a)(1), the award amount for HBA shall not exceed \$318,000, including administrative costs, per Application. However; up to \$530,000, including administrative costs, may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region. In accordance with 10 TAC §53.85(a)(1), for the Program Activities that are serving Persons with Disabilities, funds for Administrative costs cannot exceed 6% of the total project costs for the entire Contract term.

(b) Form of Assistance.

(i) In accordance with 10 TAC §53.32(e), the maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible household. The total amount of downpayment and closing cost assistance is limited to \$15,000 per eligible household for Persons with Disabilities. As defined in 10 TAC §53.32(f), the maximum amount of assistance for rehabilitation is the total of the constructions costs and soft costs provided to an eligible household that is also using funds for acquisition and is limited to

\$20,000. Rehabilitation assistance must be utilized for accessibility modifications to the unit.

(ii) In accordance with 10 TAC §53.32(m), the first lien mortgage must meet the following requirements:

(I) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

(II) No mortgages with a loan to value equal to or greater than 100% are allowed;

(III) Must not be a subprime mortgage loan as defined in 10 TAC §53.2(92);

(IV) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and

(V) The debt to income ratio (back-end ratio) may not exceed 45%.

(iii) HBA assistance will be structured as follows:

(I) 0% interest rate;

(II) five (5) or ten (10) year term contingent upon the total amount of assistance and in accordance with the federal affordability requirements at 24 CFR §92.254(a)(4);

(III) 2nd or 3rd lien; and

(IV) Deferred forgivable loan per §(9)(b)(iv) of this NOFA.

(iv) Any forgiveness of the loan occurs upon the anniversary date of the Household's continuous occupancy as its principal residence and continues on an annual pro-rata basis until maturity of the loan. In the event that the housing unit ceases to be the principal residence of the household, the forgiveness of the loan, if applicable, will cease. In the event that the housing unit ceases to be the principal residence of the household, the department has established that the federal recapture requirements defined in 24 CFR §92.254 will be imposed.

(c) Period of Affordability. The federal affordability requirements as defined in 24 CFR §92.254 will be imposed for all activities involving acquisition.

(d) Property Standards. HOME-assisted housing under the HBA Program must meet all applicable State and local housing quality standards and code requirements. In the absence of such standards or code requirements, the housing must meet the Housing Quality Standards (HQS) in 24 CFR §982.401. When HOME funds are used for rehabilitation, the entire unit must be brought into compliance with the applicable property standards, local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion pursuant to 24 CFR §92.251(a). In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514 of the Texas Government Code. Additionally, housing that is rehabilitated with funds awarded under this NOFA must meet energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

(e) Contract Terms. In accordance with 10 TAC §53.73(a)(2), the contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

(ii) Twelve (12) months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(iii) Eighteen (18) months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

(iv) Twenty-four (24) months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

(f) Application Threshold Requirements. The following threshold criteria listed in this subsection and in §(9)(g) of this NOFA are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded.

(i) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Applicants must evidence the ability to administer the program and commit cash reserves of at least \$80,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget. Applicants must submit:

(I) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(II) Evidence of an available line of credit or equivalent of at least \$80,000; or

(III) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(ii) Resolution. All applications submitted must include an original resolution signed and dated within the six (6) months preceding the application submission date from the Applicant's direct governing body which includes:

(I) Authorization of the submission of the Application;

(II) Commitment and amount of cash reserves for use during the contract period; source of funds for match obligation and match dollar amount;

(III) Name and title of the person authorized to represent the organization; and

(IV) Signature authority to execute a contract.

(iii) Description of Demand. All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area which includes:

(I) Third Party source data (i.e. Census data);

(II) Calculations (i.e. amounts to be spent/contributed locally per project); and

(III) Assumptions.

(iv) Homebuyer Counseling. Applicants must evidence that a minimum of eight (8) hours of homebuyer counseling to all eligible participants will be provided by a certified homebuyer counselor. This evidence must include:

(I) Documentation describing the level of homebuyer counseling proposed, including post purchase counseling;

(II) Applicant must state who will provide the homebuyer counseling;

(III) A copy of the curriculum; and

(IV) A copy of the proposed written agreement with the service provider (if the applicant is not providing the service).

(v) Plan for Identifying Accessibility needs of the Homebuyer. Applicant must submit a plan that clearly describes the process and expertise to be used in determining the accessibility needs of the homebuyer. The plan should include resumes of qualified/experienced staff or proposed agreement with a qualified/experienced third party company or agency.

(g) Threshold Score. In addition to the threshold requirements under §(9)(f) of this NOFA, the application must meet the minimum threshold score of 12. This score is tallied using points from the following categories:

(i) Affordable Housing Needs Score. Points range from zero to seven, as published by the Department. (Maximum 7 points);

(ii) Income Targeting. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. PWD Table 1 (HBA Point Incentives for Income Targeting) will be used to determine income targeting requirements and associated points, as follows: (Maximum 10 points);

PWD Table 1.

HBA Point Incentives for Income Targeting

Income Target	Points
5% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

(iii) Experience Providing Services to Persons with Disabilities. Applicants must have at least five (5) or more years providing services specifically targeting the needs of persons with disabilities as evidenced by previous contracts with funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a

partnership with an entity or organization that meets the requirement. (Maximum 5 points); and

(iv) Experience Providing Homebuyer Assistance Service. Applying entity must have at least two (2) years experience providing homebuyer assistance services as evidenced by current or previous contracts with

funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement. (Maximum 5 points).

(10) Tenant-Based Rental Assistance (TBRA). Until 5:00 p.m. Tuesday, February 2, 2010, approximately \$881,768 of HOME Funds released under this NOFA shall be set-aside for Tenant-Based Rental Assistance to provide eligible households rental subsidies, including security and utility deposits, to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD. Funds requested and awarded under this section must meet the requirements of this section.

(a) Maximum Award. In accordance with 10 TAC §53.47(a)(1) the maximum award amount for TBRA shall not exceed \$318,000, including administrative costs, per Application. In accordance with 10 TAC §53.85(a)(1), for the TBRA program activity, funds for administrative costs cannot exceed 6% of the total project funds for the entire Contract term.

(b) Form of Assistance.

(i) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

(ii) As per 10 TAC §53.33, the Household must comply with the following initial eligibility requirements:

(I) Participate in an approved self-sufficiency program;

(II) Maintain principal residency in the rental unit for which the subsidy is being provided;

(III) Be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and

(IV) Meet all other Program eligibility requirements as required by the Department.

(iii) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program."

(c) Period of Affordability. There is no period of affordability for TBRA projects.

(d) Property Standards. As defined in 10 TAC §53.33(e), rental units must be inspected prior to occupancy, inspected annually, and must comply with Housing Quality Standards established by HUD in 24 CFR §982.401.

(e) Contract Terms. In accordance with 10 TAC §53.73(a)(3), the contract term for the TBRA Program shall not exceed thirty-six (36) months. Individual household assistance is limited to twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

(ii) Nine (9) months, application intake complete for 75% for Households to be assisted;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

(iv) Eighteen (18) months, 100% of funds already committed and 35% of funds drawn;

(v) Twenty-four (24) months, 100% of funds already committed and 50% of funds drawn; and

(vi) Thirty-six (36) months, 100% of funds already committed and 100% of funds drawn.

(f) Application Threshold Requirements. The following threshold criteria listed in this subsection and in §10(g) of this NOFA are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one (1) month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Applicants must submit:

(I) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(II) Evidence of an available line of credit for the total amount of cash reserves required; or

(III) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(ii) Resolution. All applications submitted must include an original resolution signed and dated within the six (6) months preceding the application submission date from the Applicant's direct governing body which includes:

(I) Authorization of the submission of the Application;

(II) Commitment and amount of cash reserves for use during the contract period;

(III) Name and title of the person authorized to represent the organization; and

(IV) Signature authority to execute a contract.

(iii) Description of Demand. All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area which includes:

(I) Source data (i.e. Census data/availability of rental units);

(II) Calculations (i.e. amounts to be spent/contributed locally per project); and

(III) Assumptions.

(iv) TBRA Self Sufficiency Program. Applicants must submit a proposed detailed Self Sufficiency Plan, and must:

- (I) Describe the process for the transition of households to permanent housing by the end of the twenty-four (24) month rental assistance contract;
- (II) Include documentation describing the necessary components for the overall plan proposed for transition of potential tenants;
- (III) Detail, like a case management plan, the needs of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities;
- (IV) Include a sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the twenty-four (24) month rental assistance;
- (V) If additional income is required to attain self-sufficiency, include a plan for attaining the required education or training, or a job search plan;
- (VI) Include specific housing goals that will be completed on or before the end of the twenty-four (24) month assistance period, including:

- (A) Finding permanently subsidized housing;
- (B) Acquiring affordable market housing; or

**PWD Table 2.
Point Incentives for Income Targeting (TBRA)**

Income Target	Points
5% to 29.99% of units at 50% AMFI	1
30% to 59.99% of units at 50% AMFI	3
60% to 100% of units at 50% AMFI	5
5% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(11) Review Process.

- (a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a received date based on the date and time it is physically received by the Division. Each application will be reviewed on its own merits as applicable. Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier received date but that did not complete a phase of review in a timely manner.
- (b) The Department will ensure review of materials for eligibility and threshold criteria, and requirements of the NOFA and Application Submission Procedures Manual (ASPM), and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will continue the review process. Applications with Administrative Deficiencies not cured within five (5) business days will be terminated and must reapply for consideration of funds. Applications that have completed this phase will be reviewed for recommendation to the Board by the Executive Award and Review Advisory Committee (EARAC).

- (C) Other permanent housing solutions.

- (VII) Include the required steps, such as:

- (A) Completion of an application for affordable housing;
- (B) Approximate waiting time to acquire the type of housing desired; and
- (C) The cost of the housing to the tenant.

- (g) Threshold Score. The application must meet the minimum threshold score of 10. This score is tallied using points from the following categories:

- (i) Affordable Housing Needs Score. Points range from zero to seven, as published by the Department. (Maximum 7 points).
- (ii) Income Targeting. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. (Maximum 20 points). PWD Table 2 (Point Incentives for Income Targeting (TBRA)) will be used to determine income targeting requirements and associated points; as follows.

- (c) Because Applications are processed in the order they are received by the Department, it is possible that the Department will award all available HOME funds before an Application has been completely reviewed. If, on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

- (d) An applicant will be ineligible if they meet any of the criteria in 10 TAC §53.42 and will be terminated without being processed as an Administrative Deficiency.

- (e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

- (f) All Applicants will be processed through the Department's Application Evaluation System, which includes a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation, or the recommendation may include conditions.

(g) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility. Recommendations are limited by the total amount of funds available under this NOFA and the maximum award amount.

(h) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act, Chapter 2009, of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(i) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(12) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. Friday, May 28, 2010, regardless of method of delivery.

(b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published on the Department's web site until the deadline. Questions regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

E-mail: HOME@tdhca.state.tx.us

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit one complete original printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Pursuant to §2306.147(b) of the Texas Government Code, the Department will waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include

proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(h) Application Workshop. The Department will conduct application workshops in locations throughout the State which provide an overview of the HOME Program Activities eligible under this NOFA and also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information.

(i) Audit Requirements. An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline, per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Division

221 East 11th Street

Austin, TX 78701-2410

Or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Division

Post Office Box 13941

Austin, TX 78711-3941

TRD-200903032

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 22, 2009



HOME Investment Partnerships Program 2009 Single Family Owner-Occupied Housing Assistance, Tenant-Based Rental Assistance, and Homebuyer Assistance Programs Notice of Funding Availability

(1) Summary.

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$25,923,970 in funding from the HOME Investment Partnerships Program (HOME) funds for single family housing programs, including Owner-Occupied Housing (OCC), Homebuyer (HBA), and Tenant-Based Rental (TBRA) Assistance, to assist low-income Texans. As published in the 2009 State of Texas Consolidated Plan One-Year Action Plan, \$18,146,779 is available for the OCC Program, \$3,888,595 is available for the HBA Program, and \$3,888,595 is available for the TBRA Program.

(b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR §92), and Chapter 2306 of the Texas Government Code. Other federal regulations apply, including but not limited to:

- (i) 24 CFR Parts 50 and 58 (Environmental Requirements);
- (ii) 24 CFR §85.36 and §84.42 (Conflict of Interest Regulations); and
- (iii) 24 CFR §5(A) (Federal Fair Housing Regulations).

(2) Source of Funds.

These funds are made available through the Department's 2009 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD). Additionally, uncommitted and deobligated HOME funds from prior years and HOME program income may be used. These funds are set-aside for eligible applicants proposing to provide assistance to eligible homeowners in need of rehabilitation or reconstruction of their primary residence, homebuyers for the acquisition (including downpayment and closing costs) of a home, and households seeking tenant-based rental assistance. Households assisted with HOME funds must be at or below 80% of the Area Median Family Income (AMFI) as defined by HUD, and meet all program eligibility requirements.

(3) Allocation of Funds.

(a) In accordance with §2306.111 of the Texas Government Code, housing funds awarded in the HOME Program must be allocated utilizing the Regional Allocation Formula (RAF) developed by the Department. Funds are allocated for each Program Activity to each Uniform State Service Region and rural and urban area types.

(b) Requirements of the Regional Allocation Formula and 10 TAC §53.48(a) prioritize funding recommendations. Applicants may apply for the maximum allowed in each activity even though the amount of available funds utilizing the RAF may be less. However, only the maximum set-aside based on §(4)(a) and (b) of this Notice of Funding Availability (NOFA) will be recommended for award during applicable period.

(4) Application Cycle.

(a) In accordance with 10 TAC §53.48(a), this NOFA will be administered using an open application cycle. Funds will be available utilizing the RAF for each specified activity on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis utilizing the funds allocated by the RAF until 5:00 p.m. Monday, August 31, 2009, regardless of method of delivery.

(b) On Tuesday, September 1, 2009, any funds which have not been requested in an application per §(4)(a) of this NOFA will collapse and be made available statewide (excluding PJs). However, funds will remain set-aside within each HOME Program Activity. Applications submitted under this subsection will be accepted by the Department on an on-going basis until 5:00 p.m. Monday, November 30, 2009, regardless of method of delivery.

(c) On Tuesday, December 1, 2009, any funds not requested under §(4)(a) or (b) of this NOFA will be made available statewide (excluding PJs) for any eligible HOME Program Activity eligible under this NOFA. Applications will be accepted by the Department on an on-going basis until 5:00 p.m. Thursday, April 30, 2010, regardless of method of delivery.

(d) Should funds made available under this NOFA become, at any time, oversubscribed or all funds be awarded; the Department may choose to close the NOFA in accordance to 10 TAC §53.48(a)(1).

(5) Rider 5 Provision.

Applicants awarded funds may use the state average median family income, adjusted for income level and household size, to determine income eligibility, and form of assistance, in accordance with 10 TAC §53.31(j), for eligible households living in those counties where the area median family income is lower than the state average median family income. This option is in accordance with the Housing Assistance Rider of the Department's Legislative Appropriation.

(6) Limitation on Funds.

(a) HOME funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

(b) The Department awards HOME funds to eligible entities and the maximum award amount may not exceed the amount as stated in the NOFA. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85. Administrator must use funds for Administrative costs in accordance with 24 CFR §92.207.

(c) In accordance with 24 CFR §53.72, the Contract Administrator may incur and be reimbursed for travel costs prior to the effective date of the HOME Contract, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

(d) An Applicant may submit an Application to apply for additional funding under the same NOFA only if the Applicant is 100% committed any current contract for the same activity.

(e) With the exception of Tenant-Based Rental Assistance, the minimum HOME assistance amount per unit may not be less than \$1,000 per HOME assisted unit. The per-unit subsidy may not exceed limits established under §221(d)(3) of the National Housing Act, which are applicable to the area in which the housing is located and as published by HUD. The purchase price of the housing unit plus the value of the rehabilitation or reconstruction, if applicable, must not exceed 95% of the Single Family Mortgage Limits under §203(b) of the National Housing Act.

(7) Eligible and Ineligible Applicants.

(a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

(b) If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

(c) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(8) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in the application and in accordance with the federal HOME rules at 24 CFR §92.218 and the Department's Match Guide. Applicants will be provided with the appropriate forms and instructions on how to report eligible match. Specific Match re-

quirements are defined under §§(10), (11), or (12) of this NOFA as applicable.

(9) Eligible and Prohibited Activities.

(a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and at 10 TAC §53.31 for OCC, §53.32 for HBA, and §53.33 for TBRA.

(b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

(10) Owner-Occupied Housing Assistance (OCC).

A total of \$18,146,779 in funding released under this NOFA may be used to administer an Owner-Occupied Housing Assistance Program to provide eligible households with loans for the rehabilitation or reconstruction of existing owner-occupied housing earning 80% or less

of the Area Median Family Income (AMFI) as defined by HUD. As defined in 10 TAC §53.31(d)(1), the home must be the principal residence of the homeowner. Funds requested and awarded under this section are subject to the following requirements:

(a) Maximum Award. In accordance with 10 TAC §53.47(a)(1), the maximum award amount for OCC shall not exceed \$450,000, including administrative costs, per Application. In accordance with 10 TAC §53.85, up to 4% of the total project costs may be requested for administrative costs for the entire contract term.

(b) Regional Allocation. Funds requested and awarded under §(10) of this NOFA and submitted in accordance with §(4)(a) of this NOFA are subject to the Regional Allocation as shown in Table 1 (OCC Regional, Rural, and Urban Funding Amounts), as follows:

Table 1.
OCC Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$974,149	5.4%	\$973,931	100.0%	\$218	0.0%
2	Abilene	\$664,150	3.7%	\$645,587	97.2%	\$18,563	2.8%
3	Dallas/Fort Worth	\$3,555,944	19.6%	\$1,032,213	29.0%	\$2,523,731	71.0%
4	Tyler	\$2,027,491	11.2%	\$1,723,173	85.0%	\$304,318	15.0%
5	Beaumont	\$916,230	5.0%	\$838,750	91.5%	\$77,480	8.5%
6	Houston	\$1,339,096	7.4%	\$473,920	35.4%	\$865,177	64.6%
7	Austin/Round Rock	\$948,113	5.2%	\$390,371	41.2%	\$557,742	58.8%
8	Waco	\$577,971	3.2%	\$410,006	70.9%	\$167,964	29.1%
9	San Antonio	\$916,624	5.1%	\$599,901	65.4%	\$316,722	34.6%
10	Corpus Christi	\$1,227,434	6.8%	\$865,622	70.5%	\$361,812	29.5%
11	Brownsville/Harlingen	\$3,603,250	19.9%	\$2,025,597	56.2%	\$1,577,654	43.8%
12	San Angelo	\$798,568	4.4%	\$343,894	43.1%	\$454,673	56.9%
13	El Paso	\$597,760	3.3%	\$436,391	73.0%	\$161,369	27.0%
Total		\$18,146,779	100.0%	\$10,759,356	59.3%	\$7,387,423	40.7%

(c) Form of Assistance.

(i) Assistance will be provided to an eligible household in the form of a zero percent interest, deferred forgivable or repayable loan and in accordance with 10 TAC §53.31;

(ii) The maximum amount of assistance is the total of construction costs and soft costs provided to an eligible household. The total construction costs are limited as follows:

(I) For Rehabilitation that is Reconstruction. The lesser of \$73.00 per square foot or \$80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed \$73.00 per square foot exclusive of the aerobic septic system and demolition costs; and

(II) For Rehabilitation that is not Reconstruction - \$30,000.

(iii) The maximum amount eligible for project soft costs is defined in 10 TAC §53.85;

(iv) All loans to assisted homeowners must be evidenced by loan documents provided by the Department. Each loan to an assisted homeowner for rehabilitation must be payable to the Department. Each loan for reconstruction or rehabilitation shall be evidenced by a construc-

tion loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence;

(v) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable; and

(vi) If applicable, forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

(d) Affordability Requirements. Households assisted under the OCC Program must comply with the affordability requirements defined in 10 TAC §53.31(j) - (m) and 24 CFR §92.254, as applicable.

(e) Site and Construction Restrictions.

(i) Pursuant to 24 CFR §92.251 Housing that is rehabilitated or constructed with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion.

(ii) If a home is reconstructed, the applicant must ensure compliance with the universal design features in new construction, established by §2306.514 of the Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes. In the absence of a local code, HOME-assisted new construction or rehabilitation must meet the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514 of the Texas Government Code.

(iii) Housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187 of the Texas Government Code, and International Energy Conservation Code for energy standards as verified by RESCHECK tm.

(f) Contract Term. Per 10 TAC §53.73(a)(1), the contract term for OCC Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(ii) Eight (8) months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted;

(iv) Eighteen (18) months, 100% of Household's Loans must be closed, if applicable;

(v) Twenty-two (22) months, 100% of construction must be complete for all Households to be assisted; and

(vi) Twenty-four (24) months, 100% funds drawn and 100% of match requirement supplied.

(g) Application Threshold Requirements. Threshold criteria under this subsection and §(10)(h) of this NOFA are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded.

(i) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Applicants must evidence the ability to administer the program and commit cash reserves of at least \$120,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the

project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget. Applicants must submit:

(I) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(II) Evidence of an available line of credit or equivalent of at least \$120,000; or

(III) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(ii) Resolution. All applications submitted must include an original resolution signed and dated within the six (6) months preceding the application submission date from the Applicant's direct governing body which includes:

(I) Authorization of the submission of the Application;

(II) Commitment and amount of cash reserves for use during the contract period;

(III) Source of funds for match obligation and match dollar amount;

(IV) Name and title of the person authorized to represent the organization; and

(V) Signature authority to execute a contract.

(iii) Description of Demand. All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area which includes:

(I) Third Party source data (i.e. Census data);

(II) Calculations (i.e. amounts to be spent/contributed locally per project); and

(III) Assumptions.

(iv) Match. The Department will recognize eligible forms of matching contributions made from nonfederal resources, per 24 CFR §92.218. Table 2 (OCC Housing Program Required Community Match Contribution) will be used to determine the amount of match required to meet threshold, as follows:

Table 2.

OCC Housing Program Required Community Match Contribution

City Population	County Population	Required Match % of Project Funds Requested
< 3000	<20,000	5%
3000-5000	20,000-75,000	10%
> 5000	>75,000	12.5%

(h) Threshold Score. In addition to the threshold requirements under §(10)(g) of this NOFA, the application must meet the minimum threshold score of 15. This score is tallied using points from the following categories:

(i) Affordable Housing Needs Score. Points range from zero to seven as published by the Department. Maximum 7 points;

(ii) Additional Eligible Match. In addition to the threshold match requirement in §(10)(g)(iv) of this NOFA, the Applicant can receive

points for each percentage of additional match. Table 3 (OCC Housing Program Additional Community Match Contributions) will be used to determine points awarded under this paragraph. as follows:

Table 3.
OCC Housing Program Additional Community Match Contributions

City Population	County Population	Point Calculation
< 3000	< 20,000	10 points for each additional percentage of match
3,000 – 5,000	20,000 – 75,000	7 points for each additional percentage of match
> 5,000	> 75,000	5 points for each additional percentage of match

(iii) Income Targeting. In order to meet its annual goal of assisting very low to extremely low-income families, the Department incentivizes application points for income targeting of households assisted. Maximum 20 points. Table 4 (OCC Point Incentives for Income Targeting) will be

Table 4.

OCC Point Incentives for Income Targeting

Income Target	Points
5% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
5% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(11) Homebuyer Assistance (HBA).

Approximately \$3,888,595 of HOME Funds released under this NOFA shall be used to administer a Homebuyer Assistance Program, providing downpayment and closing cost assistance (including soft costs) to eligible first time homebuyers earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD for the acquisition of affordable single family housing.

(a) Maximum Award. In accordance with 10 TAC §53.47(a)(1), the award amount for HBA shall not exceed \$312,000, including administrative costs, per Application. However; up to \$520,000, including

used to determine income targeting requirements and associated points, as follows:

administrative costs, may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region. In accordance with 10 TAC §53.85(a)(1), for the HBA Program Activities, funds for Administrative costs cannot exceed 4% of the total project costs for the entire Contract term.

(b) Allocation Formula. Funds requested and awarded under §(11) of this NOFA and submitted in accordance with §(4)(a) of this NOFA are subject to the following Regional Allocation as shown in Table 5 (HBA Regional, Rural, and Urban Funding Amounts) as follows:

Table 5.
HBA Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$208,746	5.4%	\$208,699	100.0%	\$47	0.0%
2	Abilene	\$142,318	3.7%	\$138,340	97.2%	\$3,978	2.8%
3	Dallas/Fort Worth	\$761,988	19.6%	\$221,188	29.0%	\$540,799	71.0%
4	Tyler	\$434,462	11.2%	\$369,251	85.0%	\$65,211	15.0%
5	Beaumont	\$196,335	5.0%	\$179,732	91.5%	\$16,603	8.5%
6	Houston	\$286,949	7.4%	\$101,554	35.4%	\$185,395	64.6%
7	Austin/Round Rock	\$203,167	5.2%	\$83,651	41.2%	\$119,516	58.8%
8	Waco	\$123,851	3.2%	\$87,858	70.9%	\$35,992	29.1%
9	San Antonio	\$196,419	5.1%	\$128,550	65.4%	\$67,869	34.6%
10	Corpus Christi	\$263,022	6.8%	\$185,490	70.5%	\$77,531	29.5%
11	Brownsville/Harlingen	\$772,125	19.9%	\$434,056	56.2%	\$338,069	43.8%
12	San Angelo	\$171,122	4.4%	\$73,692	43.1%	\$97,430	56.9%
13	El Paso	\$128,091	3.3%	\$93,512	73.0%	\$34,579	27.0%
Total		\$3,888,595	100.0%	\$2,305,576	59.3%	\$1,583,019	40.7%

(c) Form of Assistance.

(i) In accordance with §53.32(e), the maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible household. The total amount of downpayment and closing cost assistance is limited to \$20,000 per eligible homebuyer.

(ii) In accordance with 10 TAC §53.32(m), the first lien mortgage must meet the following requirements:

(I) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

(II) No mortgages with a loan to value equal to or greater than 100% are allowed;

(III) Must not be a subprime mortgage loan as defined in 10 TAC §53.2(92);

(IV) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and

(V) The debt to income ratio (back-end ratio) may not exceed 45%.

(iii) HBA assistance will be structured as follows:

(I) Zero percent interest rate;

(II) Five (5) or ten (10) year term contingent upon the total amount of assistance and in accordance with the federal affordability requirements at 24 CFR §92.254(a)(4);

(III) 2nd or 3rd lien; and

(IV) Deferred forgivable loan per §(11)(c)(iv) of this NOFA.

(iv) Any forgiveness of the loan occurs upon the anniversary date of the Household's continuous occupancy as its principal residence and continues on an annual pro-rata basis until maturity of the loan. In the event that the housing unit ceases to be the principal residence of the household, the forgiveness of the loan, if applicable, will cease. In the event that the housing unit ceases to be the principal residence of the household, the department has established that the federal recapture requirements defined in 24 CFR §92.254 will be imposed.

(d) Period of Affordability. The federal affordability requirements as defined in 24 CFR §92.254 will be imposed for all activities involving acquisition.

(e) Property Standards. HOME-assisted housing under the HBA Program must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards or code requirements, the housing must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(f) Contract Terms. In accordance with 10 TAC §53.73(a)(2), the contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

(ii) Twelve (12) months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(iii) Eighteen (18) months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

(iv) Twenty-four (24) months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

(g) Application Threshold Requirements. The following threshold criteria listed in this subsection and in subsection (h) of this NOFA are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded.

(i) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Applicants must evidence the ability to administer the program and commit cash reserves of at least \$80,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by pro-

gram funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget. Applicants must submit:

(I) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(II) Evidence of an available line of credit or equivalent of at least \$80,000; or

(III) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(ii) Resolution. All applications submitted must include an original resolution signed and dated within the six (6) months preceding the application submission date from the Applicant's direct governing body which includes:

(I) Authorization of the submission of the Application;

(II) Commitment and amount of cash reserves for use during the contract period; source of funds for match obligation and match dollar amount;

(III) Name and title of the person authorized to represent the organization; and

(IV) Signature authority to execute a contract.

(iii) Description of Demand. All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area which includes:

(I) Third Party source data (i.e. Census data);

(II) Calculations (i.e. amounts to be spent/contributed locally per project); and

(III) Assumptions.

(iv) Match. Per 24 CFR §92.218, the Department will recognize eligible forms of matching contributions made from nonfederal resources. Match must equal at least 5% of the total project cost requested.

(v) Homebuyer Counseling. Applicants must evidence that a minimum of eight (8) hours of homebuyer counseling to all eligible participants will be provided by a certified homebuyer counselor. This evidence must include:

(I) Documentation describing the level of homebuyer counseling proposed, including post purchase counseling;

(II) Applicant must state who will provide the homebuyer counseling;

(III) A copy of the curriculum; and

(IV) A copy of the proposed written agreement with the service provider (if the applicant is not providing the service).

(h) Threshold Score. In addition to the threshold requirements under §(11)(g) of this NOFA, the application must meet the minimum threshold score of 10. This score is tallied using points from the following categories:

(i) Affordable Housing Needs Score. Points range from zero to seven, as published by the Department. (Maximum 7 points);

(ii) Additional Match. Each full percentage point beyond the required 5% of total project cost that is contributed in eligible local match will result in an additional 5 points. (Maximum 10 points); and

(iii) Income Targeting. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. Table 6 (HBA Point Incentives for Income Targeting) will be used to determine income targeting requirements and associated points, as follows: (Maximum 10 points).

Table 6.

HBA Point Incentives for Income Targeting

Income Target	Points
5% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

(12) Tenant-Based Rental Assistance (TBRA).

Approximately \$3,888,595 of HOME funds released under this NOFA shall be used to administer a Tenant-Based Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits, to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD. Funds requested and awarded under this section must meet the requirements of this section.

(a) Maximum Award. In accordance with 10 TAC §53.47(a)(1) the maximum award amount for TBRA shall not exceed \$336,000, including administrative costs, per Application. In accordance with 10 TAC

§53.85(a)(1), for the TBRA program activity, funds for administrative costs cannot exceed 4% of the total project funds per year of the Contract term.

(b) Allocation Formula. Funds requested and awarded under §(12) of this NOFA and submitted in accordance with §(4)(a) of this NOFA are subject to the Regional Allocation as shown in Table 7 (HBA Regional, Rural, and Urban Funding Amounts), as follows:

Table 7.
HBA Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$208,746	5.4%	\$208,699	100.0%	\$47	0.0%
2	Abilene	\$142,318	3.7%	\$138,340	97.2%	\$3,978	2.8%
3	Dallas/Fort Worth	\$761,988	19.6%	\$221,188	29.0%	\$540,799	71.0%
4	Tyler	\$434,462	11.2%	\$369,251	85.0%	\$65,211	15.0%
5	Beaumont	\$196,335	5.0%	\$179,732	91.5%	\$16,603	8.5%
6	Houston	\$286,949	7.4%	\$101,554	35.4%	\$185,395	64.6%
7	Austin/Round Rock	\$203,167	5.2%	\$83,651	41.2%	\$119,516	58.8%
8	Waco	\$123,851	3.2%	\$87,858	70.9%	\$35,992	29.1%
9	San Antonio	\$196,419	5.1%	\$128,550	65.4%	\$67,869	34.6%
10	Corpus Christi	\$263,022	6.8%	\$185,490	70.5%	\$77,531	29.5%
11	Brownsville/Harlingen	\$772,125	19.9%	\$434,056	56.2%	\$338,069	43.8%
12	San Angelo	\$171,122	4.4%	\$73,692	43.1%	\$97,430	56.9%
13	El Paso	\$128,091	3.3%	\$93,512	73.0%	\$34,579	27.0%
Total		\$3,888,595	100.0%	\$2,305,576	59.3%	\$1,583,019	40.7%

(c) Form of Assistance.

(i) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

(ii) As per 10 TAC §53.33, the Household must comply with the following initial eligibility requirements:

(I) Participate in an approved self-sufficiency program;

(II) Maintain principal residency in the rental unit for which the subsidy is being provided;

(III) Be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and

(IV) Meet all other Program eligibility requirements as required by the Department.

(iii) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program."

(d) Period of Affordability. There is no period of affordability for TBRA projects.

(e) Property Standards. As defined in 10 TAC §53.33(e), rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD in 24 CFR §982.401.

(f) Contract Terms. In accordance with 10 TAC §53.73(a)(3), the contract term for the TBRA Program shall not exceed thirty-six (36) months. Individual household assistance is limited to twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

(ii) Nine (9) months, application intake complete for 75% for Households to be assisted;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

(iv) Eighteen (18) months, 100% of funds already committed and 35% of funds drawn;

(v) Twenty-four (24) months, 100% of funds already committed and 50% of funds drawn; and

(vi) Thirty-six (36) months, 100% of funds already committed and 100% of funds drawn.

(g) Application Threshold Requirements. The following threshold criteria listed in this subsection and in subsection (h) of this NOFA are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

(i) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one (1) month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Applicants must submit:

(I) Current financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(II) Evidence of an available line of credit for the total amount of cash reserves required; or

(III) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(ii) Resolution. All applications submitted must include an original resolution signed and dated within the six (6) months preceding the application submission date from the Applicant's direct governing body which includes:

(I) Authorization of the submission of the Application;

(II) Commitment and amount of cash reserves for use during the contract period;

(III) Name and title of the person authorized to represent the organization; and

(IV) Signature authority to execute a contract.

(iii) Description of Demand. All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area which includes:

(I) Source data (i.e. Census data/availability of rental units);

(II) Calculations (i.e. amounts to be spent/contributed locally per project); and

(III) Assumptions.

(iv) Match. There is no match requirement for TBRA Program activity.

(v) TBRA Self Sufficiency Program. Applicants must submit a proposed detailed Self Sufficiency Plan, and must:

(I) Describe the process for the transition of households to permanent housing by the end of the twenty-four (24) month rental assistance contract;

(II) Include documentation describing the necessary components for the overall plan proposed for transition of potential tenants;

(III) Detail, like a case management plan, the needs of the tenant, how these needs will be addressed including any agreements with service

providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities;

(IV) Include a sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the twenty-four (24) month rental assistance;

(V) If additional income is required to attain self-sufficiency, include a plan for attaining the required education or training, or a job search plan;

(VI) Include specific housing goals that will be completed on or before the end of the twenty-four (24) month assistance period, including:

(A) Finding permanently subsidized housing;

(B) Acquiring affordable market housing; or

(C) Other permanent housing solutions.

(VII) Include the required steps, such as:

(A) Completion of an application for affordable housing;

(B) Approximate waiting time to acquire the type of housing desired; and

(C) The cost of the housing to the tenant.

(h) Threshold Score. The application must meet the minimum threshold score of 15. This score is tallied using points from the following categories:

(i) Affordable Housing Needs Score. Points range from zero to seven, as published by the Department. (Maximum 7 points).

(ii) Income Targeting. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. (Maximum 20 points). Table 8 (Point Incentives for Income Targeting (TBRA)) will be used to determine income targeting requirements and associated points; as follows.

Figure 8:

Table 8.

Point Incentives for Income Targeting (TBRA)

Income Target	Points
5% to 29.99% of units at 50% AMFI	1
30% to 59.99% of units at 50% AMFI	3
60% to 100% of units at 50% AMFI	5
5% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

(13) Review Process.

(a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a received date based on the date and time it is physically received by the Division. Each application will be reviewed on its own merits as applicable. Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an

earlier received date but that did not complete a phase of review in a timely manner.

(b) The Department will ensure review of materials for eligibility and threshold criteria, and requirements of the NOFA and Application Submission Procedures Manual (ASPM), and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will continue the review process. Applications with Administrative Deficiencies not cured within five (5) business days will be terminated and must reapply for consideration of

funds. Applications that have completed this phase will be reviewed for recommendation to the Board by the Executive Award and Review Advisory Committee (EARAC).

(c) Because Applications are processed in the order they are received by the Department, it is possible that the Department will award all available HOME funds before an Application has been completely reviewed. If, on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(d) An applicant will be ineligible if they meet any of the criteria in 10 TAC §53.42 and will be terminated without being processed as an Administrative Deficiency.

(e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

(f) All Applicants will be processed through the Department's Application Evaluation System, which includes a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation, or the recommendation may include conditions.

(g) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility. Recommendations are limited by the total amount of funds available under this NOFA and the maximum award amount.

(h) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154 of the Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(i) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(14) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. Thursday, April 30, 2010, regardless of method of delivery.

(b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published on the Department's web site until the deadline. Questions regarding this NOFA should be addressed to:

HOME Division
221 E. 11th Street

Austin, Texas 78701

E-mail: HOME@tdhca.state.tx.us

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit one complete original printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Pursuant to §2306.147(b) of the Texas Government Code, the Department will waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the state and federal regulations, and contact the HOME Division for guidance and assistance.

(h) Application Workshop. The Department will conduct application workshops in locations throughout the state which provide an overview of the HOME Program Activities eligible under this NOFA and also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information.

(i) Audit Requirements. An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline, per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs
HOME Division
221 East 11th Street
Austin, TX 78701-2410
Or via the U.S. Postal Service to:
Texas Department of Housing and Community Affairs
HOME Division
Post Office Box 13941

HOME Investment Partnerships Program Colonia Model
 Subdivision and Single-Family Development Program
 Community Housing Development Organization Notice of
 Funding Availability

(1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately \$3,000,000 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDOs) to develop new single-family housing for Texans with low-incomes. The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair

housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) These funds are made available through the Department's allocation of HOME funds from the U. S. Department of Housing and Urban Development (HUD). The program is designed to create housing options affordable to individuals and families of low income who would otherwise move into substandard housing. All funds released under this Notice of Funding Availability (NOFA) are to be used for the creation of affordable housing for low-income Texans earning 60% or less of the Area Median Family Income (AMFI).

(b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Funding made available under this NOFA is subject to the Regional Allocation Formula (RAF) and will be available as described in §(2)(c) of this NOFA. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications will be accepted until 5:00 p.m. on January 29, 2010.

(c) Funds made available under this NOFA shall be subject to the Regional Allocation Formula (RAF) until August 31, 2009 as shown in Table 1 (Regional Allocation), as follows:

Table 1.
Regional Allocation

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$161,045	5.4%	\$161,009	100.0%	\$36	0.0%
2	Abilene	\$109,796	3.7%	\$106,728	97.2%	\$3,069	2.8%
3	Dallas/Fort Worth	\$587,864	19.6%	\$170,644	29.0%	\$417,220	71.0%
4	Tyler	\$335,182	11.2%	\$284,872	85.0%	\$50,309	15.0%
5	Beaumont	\$151,470	5.0%	\$138,661	91.5%	\$12,809	8.5%
6	Houston	\$221,378	7.4%	\$78,348	35.4%	\$143,030	64.6%
7	Austin/Round Rock	\$156,741	5.2%	\$64,536	41.2%	\$92,205	58.8%
8	Waco	\$95,549	3.2%	\$67,782	70.9%	\$27,768	29.1%
9	San Antonio	\$151,535	5.1%	\$99,175	65.4%	\$52,360	34.6%
10	Corpus Christi	\$202,918	6.8%	\$143,103	70.5%	\$59,814	29.5%
11	Brownsville/Harlingen	\$595,684	19.9%	\$334,869	56.2%	\$260,816	43.8%
12	San Angelo	\$132,018	4.4%	\$56,852	43.1%	\$75,166	56.9%
13	El Paso	\$98,821	3.3%	\$72,144	73.0%	\$26,677	27.0%
	Total	\$3,000,000	100.0%	\$1,778,722	59.3%	\$1,221,278	40.7%

(d) Funds made available under this NOFA and not requested under §(2)(c) of this NOFA shall be available only to applications proposing activities located entirely within a Colonia until October 30, 2009. After this date funds will be available statewide except for within areas served by other Participating Jurisdictions in accordance with §(3)(c) of this NOFA. In accordance with 10 TAC §53.2(20), "Colonia" in §(2)(c) of this NOFA means a geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(i) Has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(ii) Has the physical and economic characteristics of a colonia, as determined by the Department.

(e) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC

§53.41. Award amounts are limited to no more than \$1 million per application and per CHDO.

(f) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed \$50,000 in accordance with 10 TAC §53.47(a)(4). Awards for operating expenses will be drawn over a two (2) year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

(3) Eligible and Prohibited Activities.

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205 and §92.254 and at 10 TAC §53.35 and §53.50, which involve the construction of affordable developments.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

(c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the State of Texas Consolidated Plan One-Year Action Plan.

(d) A portion of funds for single-family development are set-aside for eligible CHDOs and may be used for pre-development costs, land acquisition, lot development, onsite infrastructure, construction, and down payment assistance to qualified homebuyers. Onsite infrastructure includes costs for individual service lines, approved septic installation, sidewalks, curbs and site improvements. Examples of excluded infrastructure costs are water, sewer, electrical, main or transfer lines, streets and other improvements that serve the whole community.

(e) CHDO Applicants must be the developer, Contract Administrator, and construction loan borrower for the proposed development. Partnerships between CHDOs and other developers may be allowable provided the CHDO remains actively engaged and is the primary contact and any other developer partner or affiliate/related party to the partner does not also have current ownership of the property to be used for development. The Applicant must demonstrate compliance with this requirement if requested by the Department.

(f) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.5 excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(4) Documenting Sources of Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match as applicable.

(5) Affordability Requirements.

The affordability period for each newly-developed unit is based on the amount of HOME funds invested pursuant to 24 CFR §92.254. In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

(6) Site and Development Restrictions.

(a) Pursuant to 24 CFR §92.251, single family new construction housing that is constructed with HOME funds must meet all applicable local building codes (plus any amendments) and building and zoning ordinances in effect at the time of project completion. In the absence of a locally adopted building code for new construction, HOME-assisted new construction must meet the building code and version (plus any amendment) that is adopted by the county seat in which the development is located. Home-assisted new construction located in counties that have not adopted building codes must meet the 2000 International Residential Code (IRC) applicable to non-electrical aspects of residential construction, and for electrical aspects of residential construction, the 1999 National Electrical Code (NEC). Developments in unincorporated areas and counties without code enforcement procedures must have construction inspections performed as required by the Texas Residential Construction Commission (TRCC).

(b) Accessibility requirements of §2306.514, Texas Government Code apply to all newly-developed units. To the extent that a prospective buyer of a unit requests specific accessible modifications in addition to those required under §2306.514, the special modification must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the technical design requirements of the Uniform Federal Accessibility Standards (UFAS). All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(c) Newly-constructed homes must also meet energy standards as verified by RESCHECK™ certification and the energy conservation sections of the 2003 International Residential Code (IRC) and the 2003 International Energy Conservation Code, if applicable, as required by Chapter 388 of the Texas Health and Safety Code, as applicable. Housing assisted with HOME funds must have passed an environmental review in accordance with 24 CFR Part 58. Single Family Accessibility Standards must also be met when applicable.

(d) Housing that is constructed with HOME funds within the Designated Catastrophe Area (Texas first tier coastal counties and certain areas located in Harris County east of HWY 146) must meet the stricter of either the locally adopted building code (plus any amendment) or the 2006 International Residential Code (IRC) with Texas Revisions. At the completion of construction all developments must be certified for windstorm insurability by a physical engineer licensed and registered in Texas. Note that an engineer's design and an engineer's during-construction inspections will be necessary to receive the windstorm certification.

(7) Public Notifications.

The Department will notify all persons and organizations regarding the proposed development as required by 10 TAC §53.8 within fourteen (14) Days of Application receipt. In order to meet this requirement, the Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(a) Not later than fourteen (14) days prior to submission of the Application, the Applicant must e-mail, fax or mail with registered receipt

a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(b) If no reply letter is received from the local elected officials by seven (7) days prior to the submission of the Application, then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application;

(c) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(8) Application and Threshold Criteria.

The following Threshold Criteria listed in this section are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(a) Uniform Application. Completion and submission of the entire uniform application applicable to the program and any other supplemental documentation that may be required by the Department.

(b) Unit Amenities. A certification that each home will have all of the following amenities:

(i) Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room;

(ii) Blinds or window coverings for all windows;

(iii) Disposal and Energy-Star or equivalently rated dishwasher;

(iv) Oven/Range;

(v) Exhaust/vent fans (vented to the outside) in bathrooms;

(vi) Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and

(vii) Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car.

(c) Unit Sizes. A certification that each home will meet the minimum applicable unit size as provided in the following clauses of this subsection:

(i) No unit shall contain less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(ii) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space;

(iii) No less than 800 total net square feet for a two bedroom home;

(iv) No less than 1000 total net square feet for a three bedroom and two bathroom home; and

(v) No less than 1200 total net square feet for a four bedroom and two bathroom home.

(d) Design Items. All of the architectural drawings identified in this subsection must contain an accurate and legible scale or dimensions (full size construction quality plans are not required.)

(i) A site plan for each lot or set of contiguous lots with the unit and paved parking area reflected (the actual unit reflected on a particular lot may change based on the home buyer's final selection of one of the units provided under §(2) of this NOFA);

(ii) A floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition. Unit plans should be consistent with other documentation in the application; and

(iii) A FEMA Issued Flood Map that includes that location of the subject site or sites. An Applicant must identify the location of each site on the Flood Map(s).

(e) Households Served. All units must be constructed for households at or below 60% of AMI and households at or below 60% of AMI are eligible to receive 100% of the purchase price (less ineligible costs) in the form of a 0% interest first lien mortgage amortized over thirty (30) years and up to \$15,000 in down payment assistance structured as a deferred forgivable second lien.

(f) Unit Cost Limits. Each unit must meet the following requirements:

(i) The total hard construction cost does not exceed \$73.00 per square foot;

(ii) The total development cost and purchase price do not exceed the 95% of the Single Family Mortgage Limits under §203(b) of the National Housing Act as required in 24 CFR §92.252(a)(2);

(iii) The sales price may not exceed the per square foot valuation documented in the appraisal.

(g) Financing Documentation. All Applicants must provide evidence of the estimated development costs and sources of financing as described in the following paragraphs of this subsection.

(i) A written narrative describing the financing plan for the units including the funding sources for the construction of the units. Bona fide commitment letters or term sheets for all sources of construction financing must be provided. If other sources of down payment assistance are proposed, commitment letters evidencing these sources must be provided;

(ii) The "Development Cost Schedule" provided in the application. This schedule must be completed with the estimated mix of units and the Department may place restrictions on the funding based upon this mix in order to ensure that the approved funding is sufficient to complete the total number of proposed units;

(iii) An "Affordability Analysis" for each unit based upon the proposed down payment assistance and estimated permanent mortgage terms;

(h) Evidence of Property Control. All Applicants are required to document control of each lot that is proposed to be used under this program, as follows:

(i) A recorded warranty deed with corresponding executed settlement statement; or

(ii) A contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission.

(iii) The appraisal required in §(8)(n)(i) of this NOFA must also include the "as vacant" value of at least one of the proposed lots if one of the following is true:

(I) The Applicant has an Identity of Interest with the seller or current owner of the property; or

(II) Any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced.

(iv) If any lot proposed for use in the program is already owned by the person(s) that will own the completed home, the current owner must sign a certification indicating that they understand that ownership of the lot will be relinquished during the period that construction and development occurs.

(v) The purchase price of any lot in which the current owner has an Identity of Interest with the Applicant cannot exceed the lesser of the following:

(I) The original third-party acquisition cost plus verifiable costs of owning, holding, or improving the property since the date of original acquisition; and

(II) The appraised value of the lot or comparable lot as reflected in the required appraisal.

(vi) Evidence that the property is zoned for the proposed use.

(i) Evidence of Adequate Utilities. The Applicant must provide letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable.

(j) Development Team. The Applicant must provide essential contact information and Tax Identification Numbers (TINs) each organization participating in the activities identified in the application. The Applicant and owners of the Applicant must also provide documentation of any previous participation with the Department's programs.

(k) Financial Capacity. If the Department's loan(s) amount to more than 50% of the total development cost, the Application will include:

(i) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(ii) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available; or

(iii) Evidence of a line of credit or equivalent source of credit equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities.

(l) Resolution. A resolution from the Applicant's direct governing body authorizing the submission of the application and designating a person or persons authorized to execute legal documents on the Applicant's behalf.

(m) Colonia Evidence. If submitted under §(2)(d) of this NOFA, a map and any other documentation required in the Application to evidence that the proposed development meets the definition in §(2)(d)(i) of this NOFA regarding location of development entirely within a Colonia.

(n) Third Party Reports. The following third party reports must be submitted with the application unless specifically indicated otherwise.

(i) Appraisal report. An "as complete" Appraisal for at least one unit that is:

(I) Prepared by a qualified Third Party;

(II) Dated not more than six (6) months from the date that the application is submitted; and

(III) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and 10 TAC §1.34, as applicable. Appraisal requirements identified in 10 TAC §1.34 that are generally only applicable for income producing property must not be met.

(ii) Phase I Environmental Site Assessment. If any unit(s) is/are proposed to be located on currently unimproved property (without infrastructure), a Phase I Environmental Site Assessment is required and must meet be:

(I) Prepared by a qualified Third Party;

(II) Dated not more than twelve (12) months from the date that the application is submitted; and

(III) Prepared in accordance with 10 TAC §1.35 of the Real Estate Analysis Rules and Guidelines.

(o) Application Certifications. All Applicants may be required to certify to compliance with the following:

(i) Affirmative Marketing (24 CFR §92.351);

(ii) Davis-Bacon Act (24 CFR §92.354);

(iii) Environmental standards (24 CFR Parts 50 & 58);

(iv) Uniform Relocation Act (49 CFR Part 24); and

(v) Lead Safe Housing Rule (24 CFR Part 35).

(vi) Other certifications may be required as specifically stated in the ASPM current at the time of Application.

(vii) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).

(viii) Per 10 TAC §53.44(c) all entities receiving funds of \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.

(p) CHDO Certification. Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.50 at the time of Application submission. Additionally, the following apply:

(i) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development of the property, pursuant to 24 CFR §92.300.

(ii) A separate Application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a

formal certification until the award of the HOME funds has been approved by the Department's Board.

(iii) A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds. The CHDO Application package will be available with all other Application materials on the Department's website.

(9) Review Process.

(a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

(i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

(ii) Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

(iii) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

(iv) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases

of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

(c) A site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

(e) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(10) Administration.

(a) All Applicants receiving an award under this NOFA will be required to enter into a contract with the Department and will be subject to the contract requirements in 10 TAC Chapter 53, Subchapters F and G. Additionally, Applicants are encouraged to request the Department's Manual for guidance on administration of awards and contracts made

under this NOFA. This manual will also be posted to the Department's website (www.tdhca.state.tx.us/home-division/manuals-rules.htm).

(b) Financing structure. There are two separate loan closing processes in the Department's Single-Family Development Program, as follows:

(i) Construction Loan(s). The first closing is on the Lot Acquisition and Interim Construction (LAIC) Loan for both the lot purchase and construction costs. The LAIC loan (from the Department to the Applicant/Contract Administrator) will equal the total development cost of the property, excluding the developer fee and any conventional construction financing, as applicable. The following clauses must be met prior to this closing:

(I) A qualified homebuyer must be identified for each home included in the closing and a sales contract must be executed with the homebuyer;

(II) Executed construction agreement between the contractor and the Contract Administrator; and

(III) All necessary and customary pre-closing due diligence identified by the Department.

(ii) The construction loan may be for the construction of one or multiple homes provided that all other paragraphs of this subsection will be met.

(iii) Developer fee or profit will be equal to the lesser of the amount approved by the Department's Governing Board, 15% of the total development costs less the fee itself and all other costs identified in 10 TAC §1.32(e)(7)(C), or the difference between the sales price and the construction financing attributed to a home and is paid at closing on the permanent homebuyer mortgage.

(iv) Homebuyer Mortgage and Down Payment Assistance. The second closing is on the loan between the Department and homebuyer, who will be identified and qualified by the Contract Administrator to purchase the home. To ensure that the home is affordable, the Department will enter into one and/or two loans with the homebuyer depending on the family's income and use of a conventional mortgage. The loans will be structured as follows:

(I) The First Lien Loan will be a thirty (30) year amortizing loan with total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 25% and no greater than 30% of the homebuyer's gross income. Should the estimated housing payment be less than 25%, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 25% of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5% or the current "unassisted" rate available through the Department's Texas First Time Homebuyer Program, whichever is greater. The Department shall use to the income certification described in §(10)(c)(i) of this NOFA to make this determination, which may be adjusted only if the income certification described in §(10)(c)(ii) of this NOFA reflects a material decrease in gross income.

(II) The Down Payment Assistance would be a fifteen (15) year deferred forgivable second lien that makes up the difference between the amount of the first lien loan and the purchase price. For example, for a \$92,000 home and a qualified homebuyer with a monthly payment of \$225, the first lien loan will be \$81,000 (\$225 x 360 payments) at 0% interest. The second lien loan in this example would be \$11,000 (\$92,000 - \$81,000) as a deferred forgivable. If a prospective homebuyer for the same home can afford a payment of \$300 per month they will not have a second lien loan. In this example, their income is enough to payoff a first lien loan of zero percent interest over thirty (30) years.

(v) Applicants may collect an escrow fee of no more than \$500 as a homebuyer's commitment. All of the fee will be credited to the home-

buyer at closing against ineligible closing costs and the first housing payments. All other closing costs shall be paid by the Applicant and the funds awarded under this NOFA may be used to pay such reasonable and customary closing costs. The Applicant should include these costs in the Development Cost Schedule, as applicable.

(c) Homebuyer qualifications. Eligible homebuyers will be qualified based on gross household, verification of consistent income, satisfactory completion of a certified homebuyer counseling program, and a certification that all recurring debt payments (including expected principal, taxes, and insurance (PITI) to own the home) are less than or equal to 45% of the homebuyer's gross income. The applicant will certify homeowner eligibility twice, as follows:

(i) Prior to executing a sales contract and development of the home in accordance with 24 CFR Part 92; and

(ii) Prior to closing the homebuyer's loan. The purpose of this second certification is to ensure that the homeowner's income and debt load have not changed during construction of the home such that the homebuyer's ability service the repayable debt is significantly adversely impacted.

(d) If a homebuyer should become ineligible or otherwise cease participation and a new buyer is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(e) Draws. Consistent with HOME Program regulations, funding draws will be made on a reimbursement basis as completion occurs. The Applicant must provide a progress inspection from a third-party inspector, photos, lien waivers from the contractor and subcontractors (or a down-date endorsement), an itemization of actual costs incurred for each interim construction draw and in accordance with all applicable provisions of 10 TAC Chapter 53.

(f) Performance benchmarks. The Contract term will not exceed thirty-two (32) months. Performance under the contract will be based on the following benchmarks:

(i) Six (6) months, environmental clearance must be complete for 25% of the units;

(ii) Eight (8) months, lot acquisition and interim construction loans must be closed for 25% of the units;

(iii) Fourteen (14) months, construction must be completed for 25% of the units; environmental clearance must be complete for 50% of the units;

(iv) Sixteen (16) months, lot acquisition and interim construction loans must be closed for 50% of the units;

(v) Twenty-two (22) months, construction must be completed for 50% of the units; environmental clearance must be complete for 100% of the units;

(vi) Twenty-four (24) months, lot acquisition and interim construction loans must be closed for 100% of the units;

(vii) Thirty (30) months, construction must be completed for 100% of the units; and

(viii) Thirty-two (32) months, 100% of funds must be drawn.

(11) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on January 29, 2010. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the

Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at 512-475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

(b) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

(c) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

(d) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$300.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

(g) Application Workshops. The Department will present several one-day HOME Program application workshops to provide an overview of the Single-Family Development Program, application preparation and submission, evaluation criteria, and information about the major federal and state requirements that would impact the development. The workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us/home-division/sf-home/index.htm.

(h) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable state and federal regulations.

TRD-200903030

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 22, 2009



HOME Investment Partnerships Program Contract for Deed Conversion Program Notice of Funding Availability

(1) Summary.

(a) The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately \$2,000,000 in funding from the HOME Investment Partnerships Program for contract for deed conversions for low-income Texans.

(b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. Other federal regulations may also apply, including, but not limited to:

(i) 24 CFR §50 and §58 (Environmental Requirements);

(ii) 24 CFR §85.36 and §84.42 (Conflict of Interest Regulations); and

(iii) 24 CFR §5(A) (Federal Fair Housing Regulations).

(2) Source of Funds.

(a) These funds are made available through the Department's 2009 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible applicants proposing to provide assistance to eligible homebuyers for the acquisition or the acquisition and rehabilitation, new construction or reconstruction of properties for the purposes of converting an eligible contract for deed to homeownership and bringing the unit up to standards.

(b) In accordance with Rider 6 of the Department's General Appropriations Act, all funds released under this NOFA are to be used for contract for deed conversion for families that reside in a colonia with household income at or below 60% of the Area Median Family Income (AMFI), as defined by HUD.

(3) Allocation of Funds. In accordance with §2306.111, Texas Government Code, these funds are not subject to the Regional Allocation Formula (RAF).

(4) Application Cycle. In accordance with 10 TAC §53.48, this NOFA will be an open application cycle and funding will be available on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis until all funds have been awarded or 5:00 p.m. on Friday, May 28, 2010, whichever occurs first, regardless of method of delivery. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet eligibility and minimum threshold criteria will not be considered for funding.

(5) Rider 5 Provision. Applicants awarded funds may use the state average median family income, adjusted for income level and household size, to determine income eligibility for eligible households living in those counties where the area median family income is lower than the state average median family income. This option is in accordance with the Housing Assistance Rider of the Department's Legislative Appropriation.

(6) Limitation on Funds.

(a) HOME funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

(b) The Department awards HOME funds to eligible organizations and the maximum award amount may not exceed \$520,000, including administrative costs, per contract.

(c) Each applicant that is awarded HOME funds may be eligible to receive funding for administrative costs of 4% of the total project costs for the entire Contract term. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85.

(d) Applicants may apply for additional funds, including administrative costs, of up to \$520,000 under this NOFA only if the applicant has successfully committed 100% of the project funds of the previous award funded under this NOFA. The maximum amount of funds that may be awarded per applicant is \$1,040,000 under this NOFA.

(e) The minimum HOME assistance amount per unit may not be less than \$1,000 per HOME assisted unit. The per-unit subsidy may not exceed limits established under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation or reconstruction if applicable, must not exceed 95% of the Single Family Mortgage Limits under §203(b) of the National Housing Act.

(7) Eligible and Ineligible Applicants.

(a) Eligible applicants include nonprofit organizations, units of general local government, for-profit entities and public housing agencies.

(b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule, with the exception of applicants who have had funds deobligated for delays in completing their contractual requirements as described in 10 TAC §53.42(1). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(8) Matching Funds. Applicants are required to provide eligible match in the amount of 5% or more of the requested project funds. Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

(9) Eligible and Prohibited Activities.

(a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §§53.31 and 53.32 and must involve conversions of contracts for deed.

(b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

(10) Eligible Costs.

(a) In accordance with 10 TAC §53.32(g), the maximum amount of assistance is the total of acquisition, closing, and soft costs provided to an eligible household for a contract for deed conversion and is limited to \$25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount; however, the Executive Director will not grant an exception to exceed \$40,000 of assistance.

(b) In accordance with 10 TAC §53.32(h), the maximum amount of assistance for rehabilitation (including soft costs) to an eligible household for a contract for deed conversion is limited to the OCC Program Activity requirements in 10 TAC §53.31(g) as follows:

(i) Rehabilitation that is Reconstruction: The lesser of \$73.00 per square foot or \$80,000, if the reconstruction includes actual costs for an aerobic septic system and/or demolition. If the reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed \$73.00 per square foot exclusive of the aerobic septic system and demolition costs; and

(ii) Rehabilitation that is not Reconstruction: \$30,000.

(c) The maximum amount allowable for project soft costs is defined in 10 TAC §53.85.

(11) Affordability Requirements. Applicants should be aware that there are minimum affordability periods for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the affordability requirements defined at 24 CFR §92.254.

(12) Form of Assistance.

(a) Awarded organizations will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254.

(b) All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer must be payable to Department. Each loan for rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

(c) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homebuyer's principal residence, the remaining loan balance shall become due and payable.

(d) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

(e) In the event the home is sold (voluntary or involuntary), the assisted homebuyer will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD settlement statement must be provided.

(13) Site and Construction Restrictions.

(a) The property assisted must be located in a Colonia. Pursuant to 10 TAC, Chapter 53, a Colonia is defined as a geographic area that is located in a county some part of which is within 150 miles of the international border of this state that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(i) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(ii) has the physical and economic characteristics of a Colonia, as determined by the Department.

(b) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code.

(c) Housing that is rehabilitated with funds awarded under this NOFA must meet all applicable local codes, rehabilitation standards, ordinances, zoning ordinances, energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the 24 CFR Part 92.

(d) All other HOME-assisted housing (e.g., acquisition) must meet all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for rehabilitation, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(14) Contract Terms. The contract term shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(a) Six (6) months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(b) Eight (8) months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(c) Twelve (12) months, 100% of funds must be committed to Households to be assisted;

(d) Sixteen (16) months, 100% of Household's Loans must be closed, if applicable;

(e) Twenty-Two (22) months, 100% of construction must be complete for all Households to be assisted; and

(f) Twenty-Four (24) months, 100% funds drawn and 100% of match requirement supplied.

(15) Threshold Criteria. The following threshold criteria listed in this subsection are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded:

(a) Cash Reserve. Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Applicants must evidence the ability to

administer the program and commit cash reserves of at least \$50,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget. Applicants must submit:

(i) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(ii) Evidence of an available line of credit or equivalent of at least \$50,000; or

(iii) The CPA Opinion letter from the most recent audit and a statement from the CPA that indicates based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant.

(b) Resolution. All applications submitted must include an original resolution from the Applicant's direct governing body. The resolution must be signed and dated within the six months preceding the application submission date and the resolution must:

(i) Authorize the submission of the Application,

(ii) Commit cash reserves for use during the contract period per §(15)(a) of this NOFA;

(iii) State the source of funds for match obligation and match dollar amount of at least 5% of project funds in accordance with §8 of this NOFA;

(iv) Name the person authorized to represent the organization and granting signature authority to execute a contract.

(c) Colonia Status Requirement. Applicants are required to submit documentation verifying that the targeted Colonia(s) in which the proposed households will be assisted meets the requirements of §(3)(d) of this NOFA and is registered with the Office of the Attorney General or the Secretary of the State as a Colonia. Information regarding Colonia status is available online through the Office of the Attorney General at <http://maps.oag.state.tx.us/colgeog/> and through the Texas Secretary of State at <http://www.sos.state.tx.us/border/colonias/reg-colonias/index.shtml>.

(16) Review Process.

(a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a received date based on the date and time it is physically received by the Division. Each application will be reviewed on its own merits as applicable. Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA Applications proceeding in a timely fashion through a Phase will take priority over applications that may have an earlier received date but that did not complete a phase of review in a timely manner.

(b) The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will continue the review process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase

will be reviewed for recommendation to the Board by the Executive Award and Review Advisory Committee (EARAC).

(c) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(d) An applicant will be ineligible if they meet any of the criteria in 10 TAC §53.42 and will be terminated without being processed as an Administrative Deficiency.

(e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

(f) All applicants will be processed through the Department's Application Evaluation System, which includes a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation, or the recommendation may include conditions.

(g) Funding recommendations of eligible Applications will be presented to the Department's Governing Board of Directors based on eligibility. Recommendations are limited by the total amount of funds available under this NOFA and the maximum award amount.

(h) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(i) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(17) Application Submission.

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Friday, May 28, 2010, regardless of method of delivery.

(b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division
221 E. 11th Street
Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

(e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Final Rule (24 CFR Part 92) and the Department's HOME Program Rule (10 TAC Chapter 53) and threshold and eligibility requirements at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(g) This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable state and federal regulations, and contact the HOME Division for guidance and assistance.

(h) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the state and federal regulations and contact the HOME Division for guidance and assistance.

(i) The Department may conduct application workshops which provide an overview of the HOME Program Activities eligible under this NOFA and also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information.

(j) An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

(k) Applications must be sent via overnight delivery to:

HOME Division
Texas Department of Housing and Community Affairs
221 East 11th Street

Austin, TX 78701-2410

Or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

TRD-200903029

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 22, 2009



HOME Investment Partnerships Program Rental Housing Development Program Notice of Funding Availability

(1) Summary. The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately \$18,090,030 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the state HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (HOME Rules) in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and 84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds.

(a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for rental housing development activities involving new construction, rehabilitation, acquisition and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides.

(i) CHDO Set-Aside. At least \$5,590,030 in funds are set-aside to eligible Community Housing Development Organizations (CHDOs) meeting the requirements of 10 TAC §53.50 and this NOFA.

(ii) Persons with Disabilities Set-Aside. \$1,000,000 in funds are set-aside to fund Applications proposing all of their HOME units to be restricted for persons with disabilities and are subject to the Department's Integrated Housing Rule at 10 TAC §1.15. Funds requested and awarded under this set-aside may be located in any area of the state including within other Participating Jurisdictions. Funds requested and awarded under this set-aside are subject to a \$500,000 per Application funding limit.

(iii) General Set-Aside. The remaining \$11,500,000 in funds shall be available to all other Applications proposing Rental Housing Development that meet the requirements of this NOFA, the HOME Program Rule, and the federal HOME regulations. Of the \$11,500,000 available under this set-aside, \$6,500,000 in funds is not subject to the Regional Allocation Formula under subsection (b) of this section.

(iv) An Applicant may have only one active Application under at a time and may apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:

(I) Once all funds from the CHDO has been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General set-aside;

(II) Once all funds from the Persons with Disabilities Set-Aside have been awarded, pending Applications under this set-aside must reapply to be considered under the General or other set-asides due to the different statutory and NOFA requirements for these Applications; and

(III) The Department may complete the CHDO Certification process for Applications that originally applied under the CHDO set-aside but receiving funds from the General set-aside in order to meet the Department's future obligations to award funds CHDO activities.

(b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. Applications for funds under the CHDO or General Set-Asides, submitted prior to 5:00 p.m. on August 31, 2009 are subject to the Regional Allocation Formula (RAF) in Table 1 (CHDO Set-Aside Regional Allocation) and Table 2 (General Set-Aside Regional Allocation) as follows, except as provided in subsection (a)(iii) of this NOFA.

Table 1. CHDO Set-Aside Regional Allocation

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$300,082	5.4%	\$300,015	100.0%	\$67	0.0%
2	Abilene	\$204,588	3.7%	\$198,870	97.2%	\$5,718	2.8%
3	Dallas/Fort Worth	\$1,095,392	19.6%	\$317,968	29.0%	\$777,423	71.0%
4	Tyler	\$624,559	11.2%	\$530,815	85.0%	\$93,744	15.0%
5	Beaumont	\$282,240	5.0%	\$258,373	91.5%	\$23,867	8.5%
6	Houston	\$412,502	7.4%	\$145,989	35.4%	\$266,514	64.6%
7	Austin/Round Rock	\$292,062	5.2%	\$120,252	41.2%	\$171,810	58.8%
8	Waco	\$178,041	3.2%	\$126,300	70.9%	\$51,741	29.1%
9	San Antonio	\$282,362	5.1%	\$184,797	65.4%	\$97,565	34.6%
10	Corpus Christi	\$378,105	6.8%	\$266,651	70.5%	\$111,454	29.5%
11	Brownsville/Harlingen	\$1,109,964	19.9%	\$623,975	56.2%	\$485,989	43.8%
12	San Angelo	\$245,995	4.4%	\$105,935	43.1%	\$140,060	56.9%
13	El Paso	\$184,137	3.3%	\$134,428	73.0%	\$49,709	27.0%
	Total	\$5,590,030	100.0%	\$3,314,369	59.3%	\$2,275,661	40.7%

Table 2. General Set-Aside Regional Allocation

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$268,408	5.4%	\$268,348	100.0%	\$60	0.0%
2	Abilene	\$182,994	3.7%	\$177,879	97.2%	\$5,115	2.8%
3	Dallas/Fort Worth	\$979,773	19.6%	\$284,407	29.0%	\$695,366	71.0%
4	Tyler	\$558,636	11.2%	\$474,787	85.0%	\$83,849	15.0%
5	Beaumont	\$252,450	5.0%	\$231,102	91.5%	\$21,348	8.5%
6	Houston	\$368,963	7.4%	\$130,580	35.4%	\$238,383	64.6%
7	Austin/Round Rock	\$261,234	5.2%	\$107,559	41.2%	\$153,675	58.8%
8	Waco	\$159,249	3.2%	\$112,969	70.9%	\$46,279	29.1%
9	San Antonio	\$252,558	5.1%	\$165,291	65.4%	\$87,267	34.6%
10	Corpus Christi	\$338,196	6.8%	\$238,506	70.5%	\$99,690	29.5%
11	Brownsville/Harlingen	\$992,807	19.9%	\$558,115	56.2%	\$434,693	43.8%
12	San Angelo	\$220,030	4.4%	\$94,754	43.1%	\$125,277	56.9%
13	El Paso	\$164,701	3.3%	\$120,239	73.0%	\$44,462	27.0%
	Total	\$5,000,000	100.0%	\$2,964,536	59.3%	\$2,035,464	40.7%

(c) Any funds not requested in an Application received by 5:00 p.m. August 31, 2009, will collapse into an open Application cycle with funding available statewide and not subject to the RAF. Applications for funds under the Persons with Disabilities Set-Aside are not subject to the Regional Allocation formula and are available statewide. Applicants are encouraged to review the Application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based

on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. April 30, 2010. The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Project funds awards are limited to no more than \$3,000,000 per Application except for Applications receiving funds from the Persons with Disabilities set-aside as provided in §(2)(a)(iii) of this NOFA.

(d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME Application. The award amount for CHDO Operating Expenses shall not exceed \$50,000. Awards for operating expenses will be drawn over a two (2) year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

(e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(3) Eligible and Prohibited Activities.

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, and at 10 TAC §53.34 and §53.50, which involve only the acquisition, rehabilitation or construction of affordable rental developments.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

(c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities set-aside.

(d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five (5) years of the submission of an Application for assistance will not be permissible.

(4) Eligible and Ineligible Applicants.

(a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

(b) Applicants will be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 or as provided in 10 TAC §49.5(a) excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to Application submission.

(5) Matching Funds. Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

(6) Affordability Requirements.

(a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Unless further restricted, initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

(b) Each development will have a two-tier affordability term to be structured as follows:

(i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than \$15,000 per unit; ten (10) years if the HOME investment is \$15,000 to \$40,000 per unit; and fifteen (15) years if the HOME investment is greater than \$40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

(ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a ten (10) year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

(c) All Applicants will be required to enter into a contract with the Department and properties will be restricted under a Land Use Restriction Agreement (LURA), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(d) Applications receiving funds from the Persons with Disabilities set-aside will be required to designate all HOME units as "fixed HOME units" as provided in 24 CFR §92.252(j). All other Applications are required to designate all HOME units as "floating HOME units" as provided in 24 CFR §92.252(j).

(7) Site and Development Restrictions.

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1). All multifamily rehabilitation developments are subject to a Uniform Physical Conditions Standards inspection. All deficiencies identified in that inspection must be corrected before final retainage is released.

(c) Housing developments must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). Multifamily housing developments must meet the design and construction requirements at 10 TAC, Chap-

ter 60, Subchapter B (10 TAC §§60.201 - 211). Covered multifamily dwellings, as defined at 24 CFR §100.201 as well as common use facilities in developments with covered dwellings must meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619) and the design and construction requirements of the Fair Housing Act Design Manual. Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the design and construction requirements of the Fair Housing Act Design Manual, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A compliance certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514 of the Texas Government Code.

(d) All Applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401 of the Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973 as reflected in §(7)(c) of this NOFA. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

(e) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186 of the Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

(f) 10 TAC §49.6 of the Qualified Allocation Plan and Rules apply, except for subsections (d), (f), (g), (h), and (k).

(g) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

(8) Public Notification Requirements. Evidence in the form of a certification of all of the notifications described in the subsections of this section is required. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(a) Neighborhood Organizations Request. Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in the clauses of this subsection and proof thereof is required. Notifications must not be older than three (3) months prior to the date the Application is submitted. The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(i) Not later than fourteen (14) days prior to submission of the Application, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commis-

sioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) If no reply letter is received from the local elected officials by seven (7) days prior to the submission of the Application, then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application materials;

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(b) Written Notification. Not later than the date the Application is submitted, Applicants are required to provide written notification by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Application Notification Template" provided in the Application materials to each of the following persons or entities. Failure to provide written notifications not later than the date the Application is submitted, at a minimum, will cause an Application to be terminated. Applicants must provide notifications to:

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in §(8)(a) of this NOFA;

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of the Governing Body of any municipality containing the Development;

(v) All elected members of the Governing Body of any municipality containing the Development;

(vi) Presiding officer of the Governing Body of the county containing the Development;

(vii) All elected members of the Governing Body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(c) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for HOME funds with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur;

(ix) The expected completion date if funds are awarded; and

(x) Any other information required in the ASPM or 10 TAC §49.9(h)(8) of the Qualified Allocation Plan and Rules (QAP).

(d) **Signage on Property or Alternative.** A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code. Scattered site Developments must install a sign on each non-contiguous Development Site. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within 20 feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application materials. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either §(8)(d)(i) or (ii) of this NOFA. This written notification must include the information otherwise required for the sign as provided in the Application materials. The Application must include a map of the proposed Development Site and mark the distance required by §(8)(d)(i) or (ii) of this NOFA, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the Public Notification Sign is prohibited by local ordinance or code, evidence of the applicable ordinance or code must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(e) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications, if applicable.

(9) Threshold Criteria. The following Threshold Criteria listed in this section are mandatory requirements at the time of Application submission unless specifically indicated otherwise.

(a) **Uniform Requirements.** All the Threshold requirements in 10 TAC §49.9(h) of the Qualified Allocation Plan and Rules (QAP) in effect at the time of Application submission are requirements except as provided herein. For the purposes of receiving funds under this NOFA, the definition of Application Acceptance Period in the QAP shall be the date

that the Application is submitted. For the purposes of receiving funds under this NOFA, the following subsections of 10 TAC §49.9(h) are not required:

(i) Section 49.9(h)(4)(J) regarding General Contractor requirements for tax credit Applications;

(ii) Section 49.9(h)(11) regarding nonprofit set-aside requirements for tax credit Applications;

(iii) Section 49.9(h)(12) regarding acquisition tax credits;

(iv) Section 49.9(h)(14)(G) regarding third-party report deadlines for tax credit Applications; and

(v) Section 49.9(h)(15) regarding self scoring for competitive cycle tax credit Applications.

(b) **Unit Restrictions.** Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. Additionally, each Application must meet the following requirements:

(i) All Applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(ii) To encourage the inclusion of families and individuals with the highest need for affordable housing, Applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from these minimum target requirements.

(iii) All units targeting Extremely Low Income households at 30% or 40% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.td-hca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance but will not limit the amount of any rental assistance unless required by federal law.

(iv) Applications requesting funds under the Persons with Disabilities Set-Aside are exempt from §(9)(b)(ii) of this NOFA, but must restrict 5% of the HOME units set-aside for persons with disabilities at 30% of AMI and 100% of the HOME units set aside for persons with disabilities at 50% of AMI.

(c) **Loan Terms.** All project funds awarded to eligible Applications under this NOFA will be structured as a loan(s), will be supported by documents required by 10 TAC §53.80, and will meet the following requirements at the time of Application and as underwritten:

(i) The interest rate may be as low as 0% and may be adjusted by the Real Estate Analysis division in accordance with 10 TAC §1.32(d)(4);

(ii) The Loan term will be no less than fifteen (15) years and no greater than forty (40) years and the amortization period will be no less than twenty (20) years and no greater than forty (40) years;

(iii) The Loan(s) will be structured with a regular payment due monthly based on the amortization period. Loan(s) will not be structured with contingent payments except as allowable for Applications meeting §(2)(c)(vi) of this NOFA or for Applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for Applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and

Guidelines described in 10 TAC §1.32, including being underwritten at a minimum DCR of 1.15 inclusive of the funds requested under this NOFA;

(iv) The lien position of the Department's loan(s) shall generally be based on the amount of the Department's loan(s) in relation to the other sources of debt. However, the Department may require a superior position to sources that are greater than the Department's funds if the lender is a related party to any member of the development team or if the other source of debt is structured with a contingent payment or without any regular payment;

(v) The Department's loan(s) must close within six (6) months of execution of the contract and each loan shall be structured with an eighteen (18) month development period. An extension to these timeframes may be requested as allowed in 10 TAC §53.74; and

(vi) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow up to 50% of the total HOME award to be structured as a deferred forgivable loan with a term equal to the affordability period. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible

basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.

(d) **Leveraging of Other Public or Private Resources.** To encourage the involvement of other public agencies and private entities in affordable housing, Applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities. The maximum award may not exceed 90% of the Total Development Costs (TDC) unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited, as shown in Table 3 (Maximum HOME Award as a Percentage of TDC). The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum and 1.35 maximum.

Table 3.
Maximum HOME Award as a Percentage of Total Development Cost ("TDC")

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR equal to High Home	No	93%	7%
FMR equal to High Home	Yes	95%	5%
FMR equal to Low Home	No	96%	4%
FMR equal to Low Home	Yes	98%	2%

(e) **Funding Limits.** In addition to the limits per Application described in §(2)(a)(ii) and §(2)(b) of this NOFA, Applicant awards will be limited as follows:

(i) The Department will determine the maximum amount of HOME funds or minimum number of HOME units by pro-rating the total HOME eligible development costs of the project in accordance with 24 CFR §92.205(d). The total HOME funds as a percentage of total HOME eligible development costs may not exceed the total HOME restricted units as a percentage of the total units (For example: total HOME funds/total HOME eligible cost may not exceed total HOME units/total units). Applicants are encouraged to review "HOME eligible costs" in the HOME Final Rule, 24 CFR §§92.205 and 92.206;

(ii) The total HOME funding may not exceed the per-unit dollar limitations established under §221(d)(3) of the National Housing Act (12 U.S.C. §17151(d)(3)), which are applicable to the area in which the development is located, and as published by HUD; and

(iii) Funds awarded under this NOFA shall meet all other subsidy and funding limits required in the HOME Rule at 24 CFR Part 92.

(f) **Financial Capacity.** If the Department's loan(s) amount to more than 50% of the total development cost, except for developments also financed through the USDA-515 program, the Application will include:

(i) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(ii) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available; or

(iii) Evidence of a line of credit or equivalent tool equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities.

(g) **Affirmative Marketing.** Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and the Department's Compliance Rules at 10 TAC §60.112(d). Applicants will be required to use HUD Form 935.2a to meet these requirements.

(h) **Site and Neighborhood.** For Applications proposing new construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202 and as required in the Final Application and Submission Procedures Manual (ASPM).

(i) **Application Certifications.** All Applicants will be required to certify to compliance with the following:

(i) Davis-Bacon Act (24 CFR §92.354);

(ii) Environmental standards (24 CFR Parts 50 and 58);

(iii) Uniform Relocation Act (49 CFR Part 24); and

(iv) Lead Safe Housing Rule (24 CFR Part 35).

(v) Other certifications may be required as specifically stated in the ASPM current at the time of Application.

(vi) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).

(vii) In accordance with 10 TAC §53.44(c), all entities receiving funds of \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.

(j) CHDO Certification. Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.50 at the time of Application submission. Additionally, the following apply:

(i) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300;

(ii) A separate Application process is required for CHDO Certification and to meet the CHDO set-aside requirements. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board; and

(iii) A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside. The CHDO Application package will be available with all other Application materials on the Department's website.

(10) Review Process.

(a) Pursuant to 10 TAC §53.48, each Application will be handled on a first-come, first-served basis as further described in this section. Each Application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each Application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over Applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

(i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be for-

warded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

(ii) Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

(iii) Phase Three will only entail the review of the CHDO Certification Application, if applicable. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds or must elect to withdraw from the CHDO Set-Aside and withdraw the CHDO Certification Application. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

(b) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the Applicant that their Application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(c) Pursuant to the QAP and 10 TAC §53.42, if a submitted Application has an entire Volume of the Application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, the Application will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

(d) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

(f) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures (ADR) under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154 of the Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(11) Administration.

(a) All Applicants receiving an award under this NOFA will be required to enter into a contract with the Department and will be subject to the contract requirements in 10 TAC Chapter 53; Subchapters F and G. Additionally, Applicants are encouraged to review the Department's Rental Housing Development Manual for guidance on administration of rental housing development awards and contracts (www.tdhca.state.tx.us/home-division/manuals-rules.htm).

(b) When Department funds have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee and must be documented prior to closing. Applications also utilizing the USDA 515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(12) Tie Breaker Factors. In the event that two or more Applications receive the same priority based upon the provisions of §10 of this NOFA in any given Set-Aside category and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive a preference in consideration for an awarded of funds.

(a) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(b) The Application with the least amount of HOME funds per HOME restricted unit will win this second tier tie breaker.

(13) Application Submission.

(a) All Applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2010. The Department will accept

Applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at 512-475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

(b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

(c) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.

(d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the Application is submitted.

(e) The Application consists of several parts as described in the Final ASPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the Application is submitted.

(f) Third Party Reports. If all applicable third party reports are not received at the time of Application submission, the Application will be terminated.

(g) If a development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated Application for a HOME award or for an increase in the existing HOME award can be submitted under this NOFA. If additional funds are sought, such an Application may also request that the terms for the additional HOME funds also apply for the funds in an existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA for the respective set-aside. An Application qualifying for the abbreviated Application process may be considered by staff to have already met the threshold requirements in §(8) and §(9)(a) of this NOFA without additional review unless staff determines additional documentation is required in accordance with §(13)(h) of this NOFA.

(h) The requirements of the abbreviated Application will be reflected in the Application Submission Procedures Manual (ASPM). In addition to the Application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full Application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full Application and an amendment may be required for any Application that includes changes to the previous Board approved Application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.

(i) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or

modified and must be in final form before submitting them to the Department.

(j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. An Application fee is not required for Applications submitted pursuant to §(13)(g) of this NOFA and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.

(k) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all applicable state and federal regulations.

TRD-200903031

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 22, 2009

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ESSENT GUARANTY, INC., a foreign fire and casualty company. The home office is in Radnor, Pennsylvania.

Application for incorporation in the State of Texas by BLUEBONNET INSURANCE OF TEXAS, a domestic fire and casualty company. The home office is in Huntsville, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200902900

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 15, 2009

Company Licensing

Application to change the name of TRINITY LLOYD'S INSURANCE COMPANY to AMTRUST LLOYD'S INSURANCE COMPANY OF TEXAS a domestic Lloyd's company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200903028

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 22, 2009

Texas Lottery Commission

Instant Game Number 1213 "The Money Game"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1213 is "THE MONEY GAME". The play style is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1213 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1213.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and DOLLAR BILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1213 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
DOLLAR BILL SYMBOL	\$BILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 and \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1213), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1213-0000001-001.

K. Pack - A pack of "THE MONEY GAME" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "THE MONEY GAME" Instant Game No. 1213 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "THE MONEY GAME" Instant Game is determined once the latex on the ticket is scratched off to expose 5 (five) Play

Symbols. The player scratches all four CORNER AMOUNTS and the CENTER AMOUNT play symbols. If a player matches any CORNER AMOUNT play symbol to the CENTER AMOUNT play symbol, the player wins that AMOUNT. If the player reveals a "DOLLAR BILL" play symbol, the player wins DOUBLE the CENTER AMOUNT instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 5 (five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 5 (five) Play Symbols under the latex overprint on the front portion of

the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 5 (five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 5 (five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No matching non-winning CORNER AMOUNT play symbols on a ticket.

C. The "DOLLAR BILL" (doubler) play symbol will only appear on winning tickets as dictated by the prize structure.

D. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE MONEY GAME" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check

shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE MONEY GAME" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE MONEY GAME" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "THE MONEY GAME" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "THE MONEY GAME" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1213. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1213 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	668,800	13.64
\$2	760,000	12.00
\$4	212,800	42.86
\$5	76,000	120.00
\$10	76,000	120.00
\$20	32,300	282.35
\$50	8,360	1,090.91
\$100	1,520	6,000.00
\$1,000	76	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.97. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1213 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1213, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902979

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 21, 2009



Instant Game Number 1263 "Bonus Word Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1263 is "BONUS WORD CROSSWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1263 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1263.


A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, blackend square, \$3.00, \$5.00, \$10.00, \$20.00, \$100, \$500, \$5,000 and \$35,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1263 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
	
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$100	ONE HUND
\$500	FIV HUND
\$5,000	FIV THOU
\$35,000	35 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1263), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1263-0000001-001.

K. Pack - A pack of "BONUS WORD CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1263 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS WORD CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 145 (one hundred forty-five) possible play symbols. The player must scratch off the YOUR LETTERS and BONUS play area. The player must use the YOUR LETTERS to form words in the BONUS WORD CROSSWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. The player must use the YOUR LETTERS to form the BONUS WORD and if complete, the player wins the BONUS PRIZE. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS WORD CROSSWORD puzzle. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence within the BONUS WORD area. Only letters within the BONUS WORD CROSSWORD puzzle and BONUS WORD play areas that are matched with the YOUR LETTERS can be used to form a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not

count as a complete "word". A complete "word" must contain at least three letters. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred forty-five (145) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have 145 (one hundred forty-five) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 145 (one hundred forty-five) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 145 (one hundred forty-five) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. No duplicate YOUR LETTERS play symbols.

I. There will be a minimum of 3 vowels (A, E, I, O and U) in the YOUR LETTERS play area

J. A minimum of 15 YOUR LETTERS play symbols will match at least one letter in the crossword grid or the BONUS WORD.

K. The presence or absence of any letter or combination of letters in the YOUR LETTERS play area will not be indicative of a winning or non-winning ticket.

L. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

M. On non-winning tickets, each crossword grid will have at least 2 completed words.

N. When the BONUS WORD is completed as a winner, there will never be more than one completed word in the crossword grid.

O. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).

P. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally, diagonally or vertically in the YOUR LETTERS area.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS WORD CROSSWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and

instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS WORD CROSSWORD" Instant Game prize of \$5,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS WORD CROSSWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS WORD CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a

check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BONUS WORD CROSSWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

Figure 2: GAME NO. 1263 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	1,680,000	8.93
\$5	2,160,000	6.94
\$10	300,000	50.00
\$20	180,000	83.33
\$100	30,750	487.80
\$500	6,250	2,400.00
\$5,000	50	300,000.00
\$35,000	23	652,173.91

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.44. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1263 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1263, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902980

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1263. The approximate number and value of prizes in the game are as follows:

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 21, 2009

◆ ◆ ◆
Texas Parks and Wildlife Department

Pre-Solicitation Notice

Design and Master Planning Services for Galveston Island State Park Redevelopment

Revised 21 July 2009

This Pre-Solicitation Notice is for information purposes only.

This is not a request for submission of proposals or qualifications. RESPONSES OR OTHER INQUIRIES ARE NOT APPROPRIATE AT THIS TIME.

The Infrastructure Division of the Texas Parks and Wildlife Department (TPWD) intends to issue a Request for Qualifications (RFQ) for Professional Design and Master Planning Services for Redevelopment of appropriate infrastructure facilities within Galveston Island State Park, Galveston County, Texas on August 25, 2009.

Detailed information about the requirements and selection process will be provided in the RFQ. The purpose of this Pre-Solicitation Notice is to inform qualified entities interested in providing these services that the release of the RFQ is imminent.

Upon issuance of the RFQ on August 25, 2009, all solicitation information will be available electronically on TPWD's website: http://www.tpwd.state.tx.us/business/bidops/current_bid_opportunities/construction and on the Electronic State Business Daily website at <http://esbd.cpa.state.tx.us>.

Hard copy documents relating to the August solicitation for Professional Design and Master Planning Services will also be available at no charge by calling (512) 389-4442 or by emailing a request to contracting@tpwd.state.tx.us.

Solicitation Background

Galveston Island State Park was destroyed by Hurricane Ike in September 2008. In an effort to restore the park for public use, TPWD has been allocated funds from the recent legislative session for the redevelopment of Galveston Island State Park to include the development of a Master Plan which will direct the overall programming and location of all park facilities. Although funds for completion of construction services have not been appropriated at this time, it is TPWD's intention upon appropriation of construction funding to incorporate a multi-phased construction approach, including an initial phase of construction which will allow park visitors daily recreational use of appropriate amenities within the Park's infrastructure. The completed phase of the construction project will restore Galveston Island State Park to a fully functional park with overnight camping capabilities.

The goal of the solicitation is to award a Professional Design Services contract to the most qualified firm to provide design and master planning services for the subject project in accordance with Government Code, Chapter 2254.

TRD-200902996

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: July 21, 2009

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 17, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Properties, Inc. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37250 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Patton Village, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37250.

TRD-200903017

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 22, 2009

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 17, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37252 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Pecos, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37252.

TRD-200903018

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 22, 2009

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 20, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37257 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Dilley and The Hills, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text tele-

phone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All inquiries should reference Project Number 37257.

TRD-200903019
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2009



Correction of Error

The Public Utility Commission of Texas published a notice in the *In Addition* section of the July 24, 2009, issue of the *Texas Register* (34 TexReg 4955).

The heading on the notice, "Public Notice of Request for Comment Regarding Retail Electric Providers Disclosure to Customers," was submitted in error. The heading should read, "Public Notice of Request for Comment on Strawman Rule."

TRD-200903027



Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 2, 2009, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of East Texas Telecommunications LLC for Designation as an Eligible Telecommunications Carrier and as an Eligible Telecommunications Provider. Docket Number 37181.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. East Texas Telecommunications LLC seeks ETC/ETP designation in the Embarq study area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by August 21, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 37181.

TRD-200902935
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 13, 2009, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of J.P. Morgan Ventures Energy Corporation for Retail Electric Provider Certification, Docket Number 37224 before the Public Utility Commission of Texas.

Applicant's requested service area includes a service area defined by customers.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than August 7, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 37224.

TRD-200902934
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 29, 2009, to amend a certificate of convenience and necessity for a proposed Competitive Renewable Energy Zones (CREZ) transmission line in Archer, Clay and Jack Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line within Archer, Clay and Jack Counties. SOAH Docket Number 473-09-4540; PUC Docket Number 37015.

The Application: The application of Oncor Electric Delivery Company LLC (Oncor) for a proposed CREZ transmission line is designated the Bowman-Jacksboro 345 kV Transmission Line Project. In Docket Number 33672 the commission determined that the transmission facilities identified in its final order were necessary to deliver to customers renewable energy generated in the CREZ. The Bowman to Jacksboro project the subject of this application was specifically identified in that order as a necessary facility. In Docket Number 36146, Oncor was ordered to complete the project identified as "Reconductor Bowman to Jacksboro 345 kV line" on existing structures. Oncor determined that the existing structures were not adequate to support the upgraded conductor that the Electric Reliability Council of Texas (ERCOT) plan identified. Oncor notified ERCOT of their proposed modification and ERCOT has concurred with Oncor's plan to rebuild the line. The revised plan is to rebuild the line with double circuit lattice steel towers with a single circuit in place using bundled 1926.9 kcmil ACSS/TW conductor. While Oncor will only install one circuit initially, certification for both circuits is being sought in this docket. The estimated date to energize facilities is June 2010. Pursuant to the Public Utility Regulatory Act (PURA) §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-09-4540 and PUC Docket Number 37015.

TRD-200902936
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 30, 2009, to amend a certificate of convenience and necessity for a proposed Competitive Renewable Energy Zones (CREZ) transmission line in Jack, Parker and Wise Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line within Jack, Parker and Wise Counties. SOAH Docket Number 473-09-5154; PUC Docket Number 37119.

The Application: The application of Oncor Electric Delivery Company LLC (Oncor) for a proposed CREZ transmission line is designated the Jacksboro-Willow Creek-Parker 345 kV Transmission Line Project. In Docket Number 33672 the commission determined that the transmission facilities identified in its final order were necessary to deliver to customers renewable energy generated in the CREZ. The Jacksboro to Willow Creek and the Willow Creek to Parker projects the subject of this application were specifically identified in that order as necessary facilities. In Docket Number 36146, Oncor was ordered to complete the projects identified as (1) rebuild Jacksboro to Willow Creek 345-kV as double circuit and (2) rebuild Willow Creek to Parker 345-kV as double circuit. Both transmission line rebuild projects are included in this CCN application. Certification for the second circuit of both transmission line segments is being sought in this docket. The estimated date to energize facilities is December 2010. Pursuant to the Public Utility Regulatory Act (PURA) §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-09-5154 and PUC Docket Number 37119.

TRD-200902937
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on July 15, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 27, 2009.

Docket Title and Number: Application of Central Telephone Company of Texas d/b/a Embarq for Approval of LRIC Study to Introduce DigiLink II and TransLink II Services Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37240.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37240. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37240.

TRD-200902932
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on July 15, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or about July 27, 2009.

Docket Title and Number: Application of United Telephone Company of Texas, Inc. d/b/a Embarq for Approval of LRIC Study to Introduce DigiLink II and TransLink II Services Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37241.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37241. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37241.

TRD-200902933
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2009



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on June 9, 2009, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the San Perlita Exchange for Expanded Local Calling Service, Project Number 37091.

The petitioners in the San Perlita exchange request ELCS to the exchanges of Harlingen and Lyford.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 13, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 37091.

TRD-200903016

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 22, 2009



Texas Department of Transportation

Notice of Intent - State Highway Loop 1604 Transportation Improvements, Bexar County, Texas

Pursuant to 43 TAC §2.5(e)(2), the Texas Department of Transportation (department), in cooperation with the Alamo Regional Mobility Authority (ARMA) and the Federal Highway Administration, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project, Loop 1604 from Farm-to-Market (FM) 1957 to Interstate Highway 35 (I-35) North in Bexar County, a distance of approximately 32.35 miles. The current Loop 1604 facility consists of a four-lane divided, partial access-controlled roadway from FM 1957 to State Highway (SH) 16 and a four-lane expressway with full access-controlled through travel lanes and parallel partially access-controlled lanes that interface among the through travel lanes, local land use, and connecting roadways from SH 16 to I-35 North. Growth, development, and traffic congestion continue to increase along Loop 1604 from FM 1957 to I-35 North. The project is needed as Loop 1604 does not currently meet present and future growth, development, and traffic demands creating inefficiencies in facility safety, mobility, and operation. The purpose of the project, as currently defined, is to improve safety within the Loop 1604 corridor, enhance mobility and operational efficiency, and to deliver and implement the benefits in an expeditious manner.

The EIS will evaluate potential impacts from construction and operation of the project, including, but not limited to, the following: impacts or potential displacements to residents and businesses; detours; air and noise impacts from construction equipment, and operation of the project; water quality impacts from the construction area and from roadway storm water runoff; impacts to waters of the United States; impacts to historic and archeological resources; impacts to floodplains and irrigation canals; impacts to socio-economic resources (including environmental justice and limited English proficiency populations); indirect impacts; cumulative impacts; land use; vegetation; wildlife; and aesthetic and visual resources. The project crosses the Edwards Aquifer recharge zone and designated habitat for federally listed endangered or threatened species.

The ARMA will consider several alternatives intended to satisfy the identified need and purpose. The alternatives will include the no-build

alternative, Transportation System Management/Transportation Demand Management, mass transit, and roadway build alternatives. The roadway build alternatives may range from a two-lane road to a six-lane road, may include limited access and non-limited access (arterial) designs, and toll and non-toll lanes.

The project may require the following approvals by the federal government: Section 106 (National Historic Preservation Act), Section 401/404 (Clean Water Act), and Section 7 (Endangered Species Act). The actual approvals required may change after the ARMA completes field surveys and selects the alignment for the project.

A scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project, to assist in determining the range of alternatives for consideration in the draft EIS, and to comment on methodologies to evaluate alternatives. The ARMA will publish a notice indicating when and where scoping meetings will be held. The notice will be published in newspapers of general circulation in the project area at least 30 days prior to the meetings, and again approximately 10 days prior to the meetings.

The ARMA will complete the procedures for public participation and the department will complete coordination with other agencies as described in one or both the National Environmental Policy Act and state law. In addition to any scoping meetings, the ARMA will hold a series of meetings to solicit public comment during the environmental review process. They will be held during appropriate phases of the project development process. Public notices will be given stating the date, time, and location of the meeting or hearing and will be published in English as well as Spanish. Provision will be made for those with special communication needs, including translation if requested. The ARMA will also send correspondence to federal, state, and local agencies, and to organizations and individuals who have previously expressed or are known to have an interest in the project, which will describe the proposed project and solicit comments. The ARMA invites comments and suggestions from all interested parties to ensure that the full range of issues related to the proposed project are identified and addressed. Comments or questions should be directed to the ARMA at the address set forth below.

The department currently anticipates that the draft EIS will be completed by December of 2010.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be sent to Lisa Adelman, Legal Counsel to the Alamo RMA, 1222 N. Main Avenue, Suite 1000, San Antonio, Texas 78212, (210) 495-5499 or Dianna F. Noble, P.E., Director, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 416-2734.

TRD-200902966

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 20, 2009



Port Authority Advisory Committee

The following meeting was posted to the Secretary of State's Open Meetings site on July 21, 2009:

PORT AUTHORITY ADVISORY COMMITTEE

Friday, September 4, 2009, 12:00 p.m.

Omni Hotel, Nueces Room

900 North Shoreline Blvd.
Corpus Christi, Texas 78401

A G E N D A

1. Convene
2. Introduction of committee members and Texas Department of Transportation staff
3. Approval of minutes from the June 29, 2009 meeting (action item)
4. Discussion and development of recommendations related to the Texas Ports 2010/2011 Capital Program (action item)

5. Discussion of general matters relating to port authorities and issues for future consideration

6. Adjourn

TRD-200902976

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 21, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).